

AFR

IN THE HIGH COURT OF ORISSA CUTTACK

W.P.(C) No.2463 of 2007

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Soda Bhotra and others Petitioners

Versus

Add. Dist. Magistrate, Koraput & Ors. Opposite Parties

For Petitioners ... Mrs.P.P.Mohanty Advocate

For Opposite Parties ... Mr. U.K.Sahoo, Additional
Standing Counsel

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 31.10.2022

Biswanath Rath, J. In spite of notice on the private Opposite Parties, nobody is appearing. Heard learned counsel for the Petitioners as well as learned counsel for the State.

2. The Writ Petition involves confirming orders vide Annexures- 1 & 2 passed by the competent authority under the provision of Regulation 2 of 1956 Act. Through the pleading in the Writ Petition Mrs. Mohanty, learned counsel for the Petitioners raises a point of law reading through

the provisions at Regulation 3 of the 1956 attacking the institution of the proceeding involved herein itself for both the parties involved herein belonging to Schedule Tribe and submitted the institution of proceeding itself bad in law.

Reading through the provision at Regulation 3 of 1956, both the provisions at Sub-Section(1) & (2) of the Regulation 1956, an attempt is made by Mrs. Mohanty, learned counsel for the Petitioners that once the parties involved belong to Schedule Tribe, there is no question of initiation of such proceeding particularly under the Regulation involved.

3. In the circumstance and for a question of law involved herein further submission is advanced by Mrs. Mohanty, learned counsel for the Petitioners saying even though such a plea was not taken in the forum below however a point of law even raised at this stage can be adjudicated and in the above background Mrs. Mohanty, learned counsel for the Petitioners request for interference in both the impugned orders Annexures-1 & 2 and setting aside the both.

4. Mr.Sahoo, learned Additional Standing Counsel however reading through both the orders contested on the entertainability of the Writ Petition on the premises that none of the forums involved the question raised by the Petitioners herein, therefore there should be restriction in challenging the impugned orders on absolutely surprising ground in a Writ Petition and thus requests for dismissal of the Writ Petition. There is however no dispute that both the private parties involve herein belong to Tribe.

5. Considering the rival contentions of the Parties, this Court finds the moot question required to be decided herein looking to the provisions made in Regulation 3 of the 1956 and since both the parties belonging to schedule tribes, if the proceeding vide OSATIP Case

No.12 of 1995 was maintainable ? Keeping in view contest of the Parties through a common provision of law, this Court here takes into account the provision at Regulation 3(1) and 3(2) read as follows:-

3. Transfer of immovable property by a member of the Scheduled Tribe-(1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe:

Provided that-

(i) Nothing in this sub-section shall be construed as to permit any member of a Scheduled Tribe or his successors-in-interest to transfer any immovable property which was settled with such member of Scheduled Tribe by or under any authority of the State or the Central Government or under any law for the time being in force;

(ii) In execution of any decree for realization of the mortgage money, no property mortgaged as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe and

(iii) A member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of unirrigated land.

(2) Where a transfer of immovable property is made in contravention of Sub-section (1) the competent authority may, either on application by anyone interested therein or on information received from the Grama Panchayat or on his own motion and after giving the parties, an opportunity of being heard, order ejectment against any person in possession of the property claiming under the transfer and shall cause restoration of possession of such property to the transferor or his heirs. In causing such restoration of possession the competent authority may take such steps as may be necessary for securing compliance with the said order or preventing any breach of peace.

Provided that if the competent authority is of the opinion that the restoration of possession of immovable property to the transferor or his heirs is not reasonably practicable, he shall record his reasons thereof and shall, subject to the control of

the State Government settle the said property with another member of Scheduled Tribe in the absence of any such member with any other person in accordance with the provisions contained in the Odisha Government Land Settlement Act, 33 of 1962.”

Reading through the aforesaid provisions there remain no doubt that occasion for instituting proceeding under such regulation arises only when there is occupation of a tribe property by a non-tribe and even involving any transaction at the instance of the tribe against non-tribe. There is clear material disclosing both private parties belong to tribe community and thus Petitioners get support to their case through Regulation 3 herein.

5. In the circumstance this Court finds there is force in the submission of learned counsel for the Petitioners that the original proceeding involved herein was not entertainable in the eye of law. This Court accordingly interferes in the order at Annexure-1 & 2 and sets aside the same.

6. The Writ Petition succeeds. No order as to cost.

.....
BISWANATH RATH, J.

Orissa High Court, Cuttack.

Dated the 31st day of October, 2022/Swarna, Junior Stenographer