

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3471 OF 2022

Bhimsen Kanhar

Petitioner

Mr. Bibhuti Bhusan Mishra, Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

11.05.2022

Order No.

4. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the order dated 7th April, 2021 (Annexure-5) passed by the Sub-Divisional Magistrate, Kandhamal, Phulbani in RMA No.06 of 2018, whereby he dismissed the appeal and confirmed the order dated 2nd July, 2018 under Annexure-4 passed by the Tahasildar, Kandhamal, Phulbani in Misc. Case (Mutation) No.106 of 2018 dismissing an application filed by the Petitioner to mutate Plot Nos.110, 276, 421, 607, 657, 661, 714, 789, 860, 867, 929, 933, 935, 987, 998, 1001, 1003, 1026, 1155, 1177, 1194, 1214, 1215 and 1271 under Khata No.96 situated in Mouza Pakanagaon under Kandhamal Tahasil in the district of Kandhamal (for short, 'the case land') in his name.
3. Mr. Mishra, learned counsel for the Petitioner submits that the land stood recorded in the name of Bamuni Kanhar under Annexure-2. Since she was issueless, the Petitioner was looking after her and her landed properties. As such, out of love and

affection, she executed an unregistered Will on 15th December, 2015 in favour of the Petitioner. After her death on 3rd April, 2016 (Annexure-3), the Petitioner filed Misc. Case (Mutation) No.106 of 2018 to record the land in his name on the basis of unregistered Will under Annexure-2. The mutation case was rejected relying upon the Letter No.18034/R & DM dated 1st June, 2017 and Letter No.16449/RDM dated 7th May, 2018 of the Principal Secretary, Revenue and Disaster Management Department, Odisha wherein it is stipulated that no mutation application on the basis of a Will shall be entertained unless the same is probated. Even when a Will is probated, the mutation shall not be allowed in the Schedule Area, if the immovable property contained in the Will belongs to person belonging to Schedule Tribe. He further submits that in the instant case, both the testator as well as the Petitioner belong to Schedule Tribe community. So, the Tahasildar should not have rejected the application for mutation of the case land on the basis of a Will.

4. This Court has set out the law in W.P.(C) No.38065 of 2020 disposed of on 12th January, 2021 setting aside the letter No.16449/RDM dated 7th May, 2018. Hence, there is no legal impediment to entertain an application for mutation of land on the basis of unregistered Will.

5. Mr. Mishra, learned Additional Standing Counsel, on instruction, submits that probate of Will is not required in the district of Phulbani (Kandhamal). However, the restrictions in the letter dated 7th May, 2018 will be application as the case land in question is situated in a Scheduled Area. He further submits that

mutation application on the basis of an unregistered Will should not be entertained more particularly when the land belongs to a woman belonging to Scheduled Tribe. He, therefore, prays for dismissal of the writ petition.

6. Taking into consideration the submissions made by learned counsel for the parties and the ratio decided in W.P.(C) No. 38065 of 2020 disposed of on 12th January, 2021, this Court is of the considered opinion that the matter is required to be considered afresh by the Tahasildar, Kandhamal, Phulbani on its own merit. Accordingly, this Court while setting aside the impugned orders under Annexures-4 and 5 remits the matter back to the Tahasildar, Kandhamal, Phulbani to consider the matter afresh keeping in mind the observations made in W.P.(C) No.38065 of 2020, disposed of on 12th January, 2021.

7. It is made clear that this Court has not expressed any opinion on the merit of the case of the Petitioner and the contention raised by learned counsel for the parties, which is required to be considered by the Tahasildar, Kandhamal, Phulbani in accordance with law giving opportunity of hearing to the parties concerned.

8. This writ petition is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge