

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) NO. 3584 OF 2022

Nabaghana Mansingh *Petitioner*
Mr.Susanta Sekhar Parida, Advocate
-versus-
State of Odisha and another *Opp. Parties*
Mr.Dillip Kumar Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

Order No. **ORDER**
11.02.2022

1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks to assail the legality and propriety of order dated 2nd November, 2011 under Annexure-2 passed by the Sub-Collector, Keonjhar in Permission (Anumati) Case No. 06 of 2021 and order dated 24th December, 2021 passed by the Additional District Magistrate, Keonjhar in Revenue Misc. Case No. 06 of 2021.
3. Mr. Parida, learned counsel for the Petitioner submits that although an application under Section 22 of the OLR Act, 1960 was filed for permission to alienate the property of the Petitioner, the Sub-Collector, Keonjhar treated it to be an application under Section 3(1) of the Odisha Scheduled Areas Transfer of Immovable Property by (Scheduled Tribes) Regulations, 1956 (for short 'the Regulations, 1956'). It is his submission that the application ought to have been treated under Rule 3(1) of the Odisha Scheduled Areas Transfer of Immovable Property by (Scheduled Tribes) Rules, 1959 (for short 'the Rules, 1959'). Both the forums below without

considering the matter from its proper prospective and without conducting any enquiry as contemplated under Rule 3(2) of the Rules, 1959 proceeded on a footing that no enquiry is required as transfer of immovable property by a Scheduled Tribe member is prohibited save and except in the manner provided under the Regulation 3(1) of the Regulations, 1956. It is his further submission that as none of the authorities has referred to Rule 3(1) of the Rules, 1959, they have committed a patent error in deciding the case under Annexures-2 and 3. Hence, the orders under Annexures- 2 and 3 are liable to be set aside and the matter be remitted back to the Sub-Collector, Keonjhar for fresh adjudication taking into consideration the scope and ambit of Rule 3 (1) of the Rules, 1959.

4. Mr. Mishra, learned Additional Government Advocate, on the other hand, submits that when the transfer of immovable property by the Petitioner is prohibited under Section 3(1) of the Regulations, 1956, the authorities have committed no error in rejecting the application of the Petitioner. Further, the application of the Petitioner under Section 22 of the OLR Act, 1960 is not at all maintainable. However, by entertaining the application to be one under Section 3 (1) of the Regulations, 1956, the authorities have rightly decided the matter. Hence, this writ petition is liable to be dismissed.

5. For ready reference, Section 3(1) of the Regulations, 1956 reads 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 a 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 realisation 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 un-irrigated land.*

Explanation-I:- For the purposes of this sub-section, a transfer of immovable property:-

- (a) in favour of a female member of a Scheduled Tribe, who is married to a person not belonging to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe; and*
- (b) shall include a transfer of immovable property to a person belonging to a Scheduled Tribe for consideration paid or provided by another person not belonging to any such Tribe.*

Explanation II- For the purposes of clause (iii) of the proviso, the expression "irrigated land" shall mean such land which is irrigated at least for one crop in a year and the expression "un-irrigated land" shall be construed accordingly.

Further, Rule 3 of the Rules, 1959 reads as follows.

"3. Procedure for transfer to non-Scheduled Tribes. *-(1) A member of a Scheduled Tribe who intends to transfer any of his immovable property situated within a Scheduled Area to a member of any non-Scheduled Tribe, shall submit an application for the purpose and obtain the prior consent in writing of the competent authority under Section 3 (1) of the Regulation.*

(2) On receipt of such application, the competent authority may, cause necessary enquiries of a summary nature to be made by an officer duly authorised by him for the purpose before passing orders. The enquiring officer shall submit his report in Form I appended to that rules."

6. On perusal of the aforesaid two provisions, it appears that if a member of Scheduled Tribe intends to alienate his immovable property, he has to make an application under Rule 3(1) of the Rules, 1959. However, in the instance case, an application was filed under Section 22 of the OLR Act, 1960. However, the authorities under the Regulations, 1956 have treated it to be an application under Section 3 (1) of the Regulations, 1956. Section 3(1) of the Regulations, 1956 does not contemplate any application. On the other hand, Rule 3(1) of the Rules, 1959 makes provision for making an application for alienation of the immovable property by a member of Scheduled Tribe. Thus, while considering the matter, the Authorities ought to have taken note of the scope and ambit of the Rule 3(1) of the Rules, 1959. It further appears that no enquiry whatsoever was conducted while adjudicating the application for alienation.

7. In that view of the matter, the impugned orders under Annexures-2 and 3 are not sustainable in law and the same are set aside. The matter is remitted back to the Sub-Collector, Keonjhar- Opposite Party No.4 for fresh consideration keeping in view the observation made above.

8. In order to avoid further delay in the matter, Mr. Parida, learned counsel for the Petitioner undertakes to intimate the Petitioner to appear before the Sub-Collector, Keonjhar on 28th February, 2022 along with certified copy of this order to receive

further instruction in the matter. The Sub-Collector, Keonjhar shall also make an endeavour to consider the application afresh on its own merit as expeditiously as possible.

9. With the aforesaid observation and direction, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge

bks/ms

