

ORISSA HIGH COURT : C U T T A C K

W.P.(C) No.9308 of 2007

*An application under Article 226 & 227 of
the Constitution of India, 1950*

Baikunthanath Nayak

: Petitioner

-Versus-

State of Orissa & Ors.

: Opposite Parties

For Petitioner

: M/s. S. Mohanty,
S.K. Behera,
B. Ganthia

For Opposite Party Nos.1 to 4

: Mr. S.P. Panda,
Addl. Govt. Adv.

For Opposite Party No.6

: M/s. P.K. Rath,
P.K. Satpathy,
R.N. Parija,
S.K. Pattnaik,
D.P. Pattnaik

J U D G M E N T

**CORAM :
JUSTICE BISWANATH RATH**

Date of hearing & judgment : 15.07.2022

1. This writ petition involves a challenge to the order of the Tahasildar and the consequential order of the Sub-Collector vide

Annexures-4, 5 & 6 arising out of a proceeding under the Mutation Manual.

2. Factual background involved herein is; consequent upon the parties entering into a registered sale deed involving sale of land involved herein the purchaser applied for correction of record of rights by way of a proceeding under the Mutation Manual. It appears, after disposal of the proceeding vide Mutation Case No.53/2003 on 13.05.2003 directing for appropriate correction in the record of rights, the record of rights appears to have been corrected vide Annexure-2. The Petitioner claims after correction of the record of right vide Annexure-2 he was going on paying the land revenue. One such document is filed at Annexure-3. It is alleged that being aggrieved with the order in Mutation Case No.53/2003 the vendors involved in the sale deed preferred appeal vide Mutation Appeal No.11/2003 before the Sub-Collector, Rairakhol. The case of the appellant therein is that there has been wrong disclosure on the caste of the purchaser and thus a claim was made for allowing the appeal under presumption that the sale deed a void one. On this main ground the appeal was contested. It appears, considering the case of the parties, the appellate authority, however, found the case to be reconsidered by the Tahasildar. In the process, while allowing the appeal, the appellate authority set aside the order of the Tahasildar in Mutation Case No.53/2003 and remitted the

matter back to the Tahasildar to take departmental action against the concerned R.I. for giving false information and also directing the Tahasildar to re-enquire the matter and dispose of the case in accordance with law. After such remand order the matter was re-examined and the original authority appears to have dismissed the mutation case for having no merit therein also with an observation therein that for the nature of allegation, there appears to be suppression of material facts by the purchaser in entering into the sale deed when the transaction was made between Tribe to Non-Tribe. It further appears, on rejection of the mutation case, an appeal was preferred and the same has been disposed of freshly with an order of dismissal thereby confirming the order of the Mutation Authority. Order of the Mutation Authority as well as the Appellate Authority challenged herein appears at Annexures-5 & 6.

3. In his challenge to the orders at Annexures-5 & 6, Mr. Mohanty, learned counsel for the Petitioner taking this Court to the disclosures through the sale deed further taking support of the caste certificate claimed to have been issued by the competent authority vide Annexure-7, contended that for the caste available with the Petitioner and the nature of document required to be considered in the mutation proceeding, even assuming that there is dispute raised on the caste of the Petitioner i.e. the purchaser involving a sale deed, the Mutation Authority had no authority

to get into such subject. It is, therefore, while contending that there is in fact no suppression of fact, further contended that in the event such objection subsists, nothing prevented the parties in challenge to go before the competent authority to declare the sale deed void.

It is, in the above premises, learned counsel for the Petitioner contended that there has been exceeding of jurisdiction by both the Tahasildar as well as the Sub-Collector in exercise of their power under the provisions of Mutation Manual and therefore, a prayer is made before this Court for interfering in both the orders at Annexures-5 & 6.

4. Mr. Rath, learned counsel for the Opposite Party No.6 taking this Court to the disclosures in the sale deed and the claim of the purchaser to be 'Kandha' by caste contended that this disclosure has been made by the purchaser without any material support by him. Further a contest is also made on the premises that record, if any, in the record of rights at Annexure-2 shows the Petitioner to be 'Kandha' as simply based on the information available through the sale deed taken into action. For the nature of objection raised by the owner of the land also involved in the sale deed, Mr. Rath, learned counsel for the Opposite Party No.6 contended that there is clear suppression of material facts in the involvement of the sale deed and there is no material support to the claim of the purchaser on his caste and the document should be treated to be

void and has no place to be considered in the eye of law. It is thus on reiteration of the grounds taken before the appellate authority in the first instance and continuation of the grounds in the remand proceeding and the original proceeding and the consequential appeal proceeding, Mr. Rath, learned counsel for the Opposite Party No.6 contended that all the authorities have rightly treated the sale deed being the foundation of the claim of the Petitioner as void and have rightly declined to change in the record of rights.

5. Mr. Panda, learned State Counsel in his opposition supporting the stand taken by Mr. Rath, learned counsel for the Opposite Party No.6, attempted to justify the impugned orders and thereby requested for dismissal of the writ petition.

6. Considering the rival contentions of the parties, this Court finds, the moot question remains here for adjudication of this Court is; mere acquisition that when a party having no support of such disclosures claims belonging to Scheduled Tribe category, whether it takes away the effect of the registered sale deed involved herein and in the nature of objection involved herein? have the Authorities under the Mutation Manual any jurisdiction to take a call on the registered sale deed?

7. Keeping the above questions in view, this Court now proceeds to consider this case. From the sale deed this Court finds, the sale deed

undisputedly indicates the Petitioner as the purchaser and the Opposite Party Nos.5 to 8 as the vendors. The sale deed has been registered on consent of both the parties and without having any objection in the disclosures belonging to purchaser. The sale deed has also been registered on passing of consideration amount involved therein in favour of the Opposite Party No.6. The sale deed has also a clear disclosure about handing over of possession by the vendor to the purchaser on receipt of final consideration amount. Not only that the sale deed is also registered as per the law. For the nature of transaction involving the registered sale deed by the competent authority under the Registration Act, 1908, it is just impossible that the Registering Authority blindly accepts the claims on the caste of the Petitioner involved. It appears, in the first round of litigation there was no raising of such objection. Even though it appears, the appeal is filed by the vendors on the ground of adjudication of the mutation case *ex parte* and behind their back, on reading of the sale deed it appears, there is clear disclosure by the purchaser claiming to be belonging to Scheduled Tribe category. For the property belonging to Scheduled Tribe category, in the event of registration of such document responsibility also lies with the Registering Authority to find-out the veracity in such claim by the party to avoid subsequent conflicts or confusion. It is strange to observe that the appeal is preferred by the

vendors even after receipt of final consideration, making a case that there is absolutely no material to establish the purchaser belongs to Scheduled Tribe community. For the nature of proceeding and the role of the Mutation Authority, this Court finds, the role of such authority is very limited that too the authority has to simply go by the existing materials. In the event there was any dispute with regard to the caste of the purchaser raised by the vendors even after entering into the registered sale deed and also upon receipt of final consideration, the only course left open for the vendors is to go to the appropriate Court to declare the sale deed void. On the mere acquisition of one party, there cannot be declaration of a document void that too by the Mutation Authority. It is when one side claiming to be belonging to Scheduled Tribe community. Further the Petitioner is also claiming his right through a caste certificate being issued by the competent authority at Annexure-7 and further there is also reliance of another record of rights also involving the Petitioner, but in respect of a different property clearly disclosing the Petitioner and his other relative members belonging to Kandha community. Such materials cannot be simply ignored.

8. In whole consideration of the case, this Court finds, in the event there was any doubt on the caste of the Petitioner, nothing prevented the Authority in exercising power under the Mutation Manual to leave the

matter for decision of the competent authority. For the observation made hereinabove, this Court while reiterating its finding that in no circumstance, the Mutation Authority could have gone into the validity of a registered deed, observes, in the event of raising of such question, the Mutation Authority had the only option while negating the claim in respect of the caste, would have left the matter for adjudication of the competent authority. The question framed here, is thus answered in favour of the Petitioner.

9. In the circumstance this Court finds, there is excess exercise of power by the Mutation Authority involved herein under the Mutation manual. In the process, this Court interfering in the orders at Annexures-4, 5 & 6, sets aside the same and confirms the order of the Mutation Authority vide Annmexure-1-A thereby also confirms the record of rights made in the meantime vide Annexure-2. Considering the request of Mr. Rath, learned counsel in such event that there should be available of scope with the vendor involved herein to get the issue involved, if raised, adjudicated by the competent authority, this Court considering the nature of dispute involved herein, observes, subject to the question of Limitation, if any, the dispute if agitated, be adjudicated by the competent authority, the decision at Annexures-1-A & 2 shall ultimately be abided by such decision.

10. The writ petition succeeds to the extent indicated hereinabove.

There is, however, no order as to the costs.

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(Biswanath Rath)
Judge

Orissa High Court, Cuttack.
The 15th day of July, 2022//
Ayaskanta Jena,
Senior Stenographer

