

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC NO.6687 OF 2002

Smt.K.Sowbhagyam & anr.

....

Petitioners

Mr.S.S.Rao, Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.R.P.Mohapatra, AGA
None for O.Ps.4 to 6

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
21.2.2022**

**Order
No.**

07.

1. Heard learned counsel for the Parties. In spite of notice, there is no appearance on behalf of the private opposite parties.
2. The Writ Petition involves a challenge to the order passed by the Competent Authority, vide Annexure-10 in initiation of a suo motu proceeding under Sub-Section (3)-a(i) of Section 3 of OSATIP Amendment Regulation 2 of 1956 in registering OSATIP (R) Case No.197/2001.
3. Mr.S.S.Rao, learned counsel appearing for the Petitioners taking this Court to the requirement of money by the Scheduled Tribe persons involved herein and their application seeking permission of the Competent Authority to go ahead to sale the property involved therein, further reading through the grounds of

permission by the Competent Authority, vide Annexure-3 and the recording therein contended that once there is lawful transaction in involvement of grant of statutory permission under the provision of Regulation 2 of 1956 is undertaken and such permission being worked out resulting the sale deed executed involving the Parties, it is also urged further that when the Scheduled Tribe member enjoys the benefit of such transaction based on lawful permission having appeared in the suo motu proceeding expressing their view that not only their desire seeking permission was bona fide and the money received in the process has been utilized only for the purpose indicated therein, the suo motu Authority has no jurisdiction to enter into any other aspect. It is thus contended that the order at Annexure-10 being based on materials not relevant for the purpose, further for clear recording of the intention of the Tribal people in the transaction involved based on a statutory permission, the impugned order is unsustainable. Sri Rao, learned counsel for the Petitioner, therefore, prayed for allowing the Writ Petition and interfering with the impugned order at Annexure-10.

4. Mr.Mohapatra, learned Additional Government Advocate however while not disputing that the statutory permission for sale of land of the Tribe involved herein was granted on specific claim of release of money and also further not disputing that there involved a

sale deed entering into between the parties since long involving the very same permission and the property, taking this Court to the recording of the Collector, the Suo Motu Authority, particularly in Paragraph-a, submitted that there was no proper disposal of the Application for permission at Annexure-3. There have been some lapses in undertaking such exercise as noticed by the Competent Authority. It is keeping this in view, learned Additional Government Advocate while attempting to support the order passed by the Competent Authority at Annexure-10 objected the entertainability of the Writ Petition.

5. Considering the rival contentions of the Parties, this Court finds from Annexure-3 that this proceeding was initiated for grant of permission for sale of Tribe land. The proceeding clearly records the reason for entering into sale transaction requiring such arrangement. Further the proceeding also appears to have been completed in participation of all parties. It is in this view of the matter, this Court finds some technical flaws here and there in the matter of fixation of matter, issuing of notice at some point of time cannot stand on the way once a proceeding of this nature is disposed of involving the parties concerned finally, more particularly a sale deed is already effected involving same Tribal Party. This Court, therefore, declines to interfere with the contentions raised by Mr.Mohapatra, learned

Additional Government Advocate in his opposition to the challenge to the order at Annexure-10.

6. Coming to the challenge of the Petitioner to Annexure-10, this Court going through the disclosure in Paragraph-b finds, the same reads as follows :-

“(b) As seen from the original application, it is found that the petitioners have sought the permission to sell Ac.0.26 of land covered under Khata No.2. Plot No.52 of Mouza Chekaguda, on the ground to meet the expenses for Medical treatment of P.Sanyasi Dora to incur expenditure for other Agricultural developments and to purchase a pair of Bullock. The Revenue Supervisor, Rayagada who enquired into the petition has reported that the permission was sought for Medical treatment. The O.S.D. has granted the permission to incur expenses for Medical treatment only. The petitioners now deposed this Court that they have utilized the sale price for Medical treatment, purchase of Bullock and the repair of house,. So there is no corroboration about the purpose of sale mentioned in the application with that of the report of Revenue Supervisor, observation of the O.S.D. and the present deposition of the petitioners. As such the purpose of sale is not at all genuine. It appears that neither the Revenue Supervisor, Rayagada nor the O.S.D. has properly enquired about the real necessities of the applicants and granted the permission in a routine manner.”

Reading through the permission at Annexure-3 and the impugned order, this Court finds, the Collector being the Suo Motu Authority has recorded the admission of the Tribe people involving purpose of sale and utilisation of the sale price for specific purpose in obtaining the grant of permission. It is in this view of the matter, this Court

finds, there is a genuine transaction between the Parties. In the circumstance, this Court finds, the cancellation of permission, vide Annexure-10 remains unwarranted, for which this Court interfering with the impugned order at Annexure-10 sets aside the same.

7. The Writ Petition succeeds. No cost.

(Biswanath Rath)
Judge

M.K.Rout

