

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) NO.6427 OF 2003

Laxman Machha

....

Petitioner

Mr.S.S.Rao, Sr.Adv.

-versus-

State of Orissa & ors.

....

Opposite Party(s)

Mr.S.Mishra, ASC for O.Ps.1 to 3

CORAM:

JUSTICE BISWANATH RATH

ORDER

23.8.2022

Order No.

11.

1. Heard learned counsel for the Parties.
2. The Writ Petition involves a challenge to the orders of the Original Authority as well as the Appellate Authority, vide Annexure-3 & 4 respectively.
3. Mr.S.S.Rao, learned senior counsel for the Petitioner taking this Court to the pleadings in the Writ Petition and reading together with Annexure-1 at the threshold claims that for the Caste Certificate establishing the Petitioner belonging to Scheduled Tribe, no proceeding under Section 3(2) of the OSATIP Act could have been entertainable. On the proceeding involving Section 3, it has also been brought to the notice through Annexure-3 by the learned counsel for the Petitioner that there is no dispute that both sides

therein belong to Scheduled Tribe. However for lack of legal knowledge there was no contest by either Party in the original proceeding and the proceeding was decided ex parte in favour of the private O.P. herein. Being aggrieved by such order of the Original Authority, vide Annexure-3, the Petitioner preferred an Appeal registered as OSATIP(A) No.7 of 2001, which claims to have been disposed of, vide Annexure-4. Raising the second ground of attack to Annexure-4, Mr.Rao, learned senior counsel for the Petitioner contended that once the Parties have brought their pleading based on supporting documents and the Appellate Court came to observe, no such pleading was available for consideration of the Original Authority, in the interest of justice, the Appellate Authority instead of finalizing the issue at his end ought to have remanded the matter to the Original Authority to have a fresh adjudication of the issue involving the pleadings of the Parties as well as documents supported by them. It is in the above two premises, learned counsel for the Petitioner contended that both the orders appear to be bad and ought to be interfered with and the Writ Petition should be disposed of with appropriate direction.

4. Mr.S.Mishra, learned Additional Standing Counsel for the State in an attempt to substantiate the impugned orders submitted

that the original proceeding no doubt got disposed of ex parte but after notice to the Parties, and therefore, nothing prevented the present Petitioner to place his case before the Competent Authority and no fault could be found with the Original Authority in deciding ex parte on the basis of material existed. Taking this Court to the observations in the appellate order, Mr.Mishra, learned Additional Standing Counsel contended that the Appellate Authority took the plea as well as the documents of the Parties into consideration and has come to observe that for the Petitioner having no such plea in the Original Authority, it becomes difficult on the part of the Appellate Authority to take into account such aspects. Mr.Mishra, thus contended that there was no illegality in the observation of the Appellate Authority ultimately dismissing the Appeal directing restoration of the property in favour of the Respondent therein requiring no interference of this Court.

5. Considering the rival contentions of the Parties and looking to the provision at Rule 3(2) of the OSATIP Regulations, this Court finds, the provision enables power with the Competent Authority to declare transfer of immovable property by a Member of Scheduled Tribes in contravention of provision at Rule 3(1) of the Regulations as bad. In the background involving the case and established through

Annexure-1, it appears, the Petitioner has a prima facie case satisfying to be belonging to Scheduled Tribes. So greater question remains to be decided whether Section 3 proceeding in the given circumstance is entertainable or not ?

6. Coming to the merit aspect involving the case, this Court finds, no doubt the order of the Original Authority at Annexure-3 remains ex parte. However in the Appeal though the Appellant, present Petitioner took so many grounds but unfortunately some of the grounds are not even appearing in the Appeal Memorandum. Reading the disclosures through the Appeal Memorandum, this Court finds, the Petitioner, the Appellant therein had made a serious attempt of establishing his possession over the disputed property and being Scheduled Tribe requiring no undertaking of such exercise. In the background of the plea taken in the Appeal Memorandum as well as grounds raised in course of hearing, for the opinion of this Court, if the Appellate Authority came to observe that no such plea was available before the Original Authority for its consideration, in the interest of justice and since the property claimed to be in possession of a Scheduled Tribe seriously raising a question of entertainability of the Section 3 proceeding, the mater should have been relegated back to the Original Authority to be disposed of

providing opportunity to the alleged Tribe Member, the Petitioner. The Petitioner to have his pleading by way of objection in the original proceeding and based on such pleading after providing opportunity to the Parties likely to be affected asking the Original Authority to take a fresh decision on the issue involved.

7. In the circumstance and for no appropriate consideration of the issue involved and further the Original Authority order being ex parte one, this Court declares, both the orders are bad in law. However, since a fresh adjudication of the proceeding involved, this Court remits the matter to the Original Authority for undertaking a fresh exercise and having a fresh decision involving both the Parties also taking a decision on the entertainability of the proceeding under Section 3 of the Regulations, as the Petitioner is claiming to be a Scheduled Tribe on production of document.

8. This Court records the non-appearance of the private Opposite Party in spite of notice.

9. In disposal of the Writ Petition, this Court directs the Petitioner to appear before the Sub-Collector, Malkangiri undertaking the Rule 3 exercise on 9th September, 2022 along with his objection and documents to support his claim, if any. On filing of objection and appearance of the Petitioner, the Sub-Collector,

Malkangiri shall do well in deciding the matter afresh but however after giving notice to the private Opposite Party involved herein.

(Biswanath Rath)
Judge

M.K.Rout

