

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15736 of 2009

Rasmita Mahakud

..... Petitioner

Mr. J.R. Dash, Advocate

-versus-

***Sub-Collector, Bhawanipatna and
others***

.... Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos. 1 and 2)

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
22.04.2022**

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 16th September, 2009 (Annexure-1) passed by the Sub-Collector, Bhawanipatna in RMC No.19 of 2009 filed under Section 3 (b) of the Odisha Scheduled Areas Transfer of Immovable Properties (by Scheduled Tribes) Regulations, 1956 (for short 'the Regulations').
3. It is submitted by Mr. Dash, learned counsel for the Petitioner that the Petitioner is a purchaser of land in Khata No.86 under mouza Kalibadi in the district of Kalahandi (for short 'the case land') from the recorded tenants, who belonged to Socially and Economically Backward Community (SEBC). As such, he remained under the impression that there is no need to file return in Form-II under the Regulations. The Sub-Collector observing that caste 'Koda', which was included in Sl. No.75 of the State List of SEBC, has been deleted from the said list and is included in the list of Scheduled Tribes, held that

the Petitioner was required to submit the Form-II by 7th September, 2005 in terms of the Amended Regulations, 2000. Thus, the Sub-Collector allowed the case and directed reversion of the land in question to Opposite Party Nos.3 and 4.

4. Mr. Dash, learned counsel for the Petitioner submits that due to want of wide publication of the amendment, the Petitioner could neither had knowledge of inclusion of caste 'Koda' in the list of Scheduled Tribe nor could he know about filing of return in Form-II. As such, he could not comply with the same. If the Petitioner is given an opportunity, she will file the same within a period of one month hence and contest the Case. He further submits that an identical matter came up for consideration before this Court in W.P.(C) No. 10142 of 2015. A collateral Bench of this Court relying on the order dated 09.05.2011 passed by a Division Bench of this Court in W.P.(C) No.11562 of 2009 directed the authorities to accept the return of the Petitioner intended to be filed in Form-II.

5. Mr. Mishra, learned ASC submits that the Petitioner has remedy of appeal to assail the order passed under Section 3(b) of the Regulations. Hence, this writ petition is not maintainable.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered opinion that due to lack of knowledge, the Petitioner could neither know about the inclusion of caste 'Koda' in the list of Scheduled Tribe nor could he file the return in Form-II. Hence, he should be given an opportunity to file the same within a reasonable period.

7. In view of the above, I do not want to take a different view in the matter than that of Hon'ble Division Bench. Accordingly, this Court sets aside the impugned order under

Annexure-1 and directs that in the event the Petitioner files return in Form No.II along with a limitation application within a period of four weeks from today before the Sub-Collector, Bhawanipatna in RMC No.19 of 2009, the same shall be accepted by condoning the delay and shall proceed with matter *de novo* in accordance with law giving opportunity of hearing to the parties concerned.

8. The writ petition is disposed of accordingly.

Issue urgent certified copy of the order on proper application.



s.s.satapathy