

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 21036 of 2022

Shashi Bala Barik

.....

Petitioner

Mr. Susanta Kumar Baral, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

13.10.2022

Order No.

3. This matter is taken up through hybrid mode.
2. Petitioner, in this writ petition prays for a direction to Opposite Party No.4-Sub-Registrar, Panposh to register the sale deed executed in her favour by one William Kiro.
3. Mr. Baral, learned counsel for the Petitioner submits that vender of the Petitioner, namely, William Kiro belongs to Kharia by caste and is an inhabitant of the state of Jharkhand. Caste 'Kharia' belongs to Scheduled Tribe in Jharkhand. As such, said caste is treated as general caste in the State of Odisha. Said William Kiro had purchased the property in question from one Sarbal Oram, son of late Jitu Oram by RSD dated 7th December, 2010 and got the land mutated in his name. The Petitioner, who belongs to general caste, contacted said William Kiro for purchase of the said land. After due consultation, a sale deed was executed by said William Kiro in her favour. Although the sale deed was presented before Opposite Party No.4 on 21st June, 2021 for registration he has

neither registered the same nor has passed any order on the same. It is further submitted that on presentation of the sale deed, the Sub-Registrar-Opposite Party No.4, vide his letter No.166 dated 18th August, 2021 sought for clarification from Board of Revenue with regard to caste of said William Kiro. In response, the Under Secretary to Board of Revenue vide letter No.4792 dated 1st October, 2021 intimated that the document by virtue of which said William Kiro sold the property is void as no permission was obtained for sale of land in favour of said William Kiro, who might be a member of general caste in Odisha. As such, no further transfer of the said property can be taken place without permission of the competent authority. Mr. Baral, learned counsel for the Petitioner submits that the ROR published in the name of said William Kiro vide Annexure 1 series has not yet been set aside by the competent Court of law. The same holds the field. As such, there is no impediment on the part of the Opposite Party No.4 to register the sale deed in favour of the Petitioner, who also belongs to general caste. He, therefore, prays for the aforesaid direction.

4. Mr. Mishra, learned ASC, on the other hand submits that caste 'Kharia' comes under Scheduled Tribe in Odisha as per entry 29 of the list of Scheduled Tribes under Part XII.—Orissa (Constitution) Scheduled Tribes Order, 1950 (for short, 'Order, 1950'). As such, the alienation of the land in question by said William Kiro in favour of the Petitioner is not sustainable. Averments made in para-3 and 5 of the writ petition itself described that said William Kiro belongs to Scheduled Tribe community. Referring to para-5 of the counter affidavit, Mr. Mishra, learned ASC submits that the vender, namely, William

Kiro has not produced any permission of the competent authority for alienation of the land in question. Hence, the prayer made in the writ petition is not sustainable. He further submits that the Sub-Registrar, Panposh-Opposite Party No.4 has not yet taken any decision on the sale deed presented before him for registration. However, a decision to that effect will be taken by the Sub-Registrar within a period of two weeks hence, if leave to that effect is granted.

5. Taking into consideration the submissions of learned counsel for the parties, this Court finds that there is a serious dispute with regard to the caste of the vender of the Petitioner, namely, William Kiro. In one hand, vide letter under Annexure-3 clarification issued by the Board of Revenue also raises doubt with regard to the caste of said William Kiro. On the other hand, entry 29 of the aforesaid Order, 1950 discloses that he (William Kiro) belongs to Scheduled Tribe community. It further appears that the alienation made in favour of said William Kiro is also without permission of the competent authority. All these aspects have to be gone into by the Sub-Registrar, Panposh while taking a decision on registration of the document presented before it.

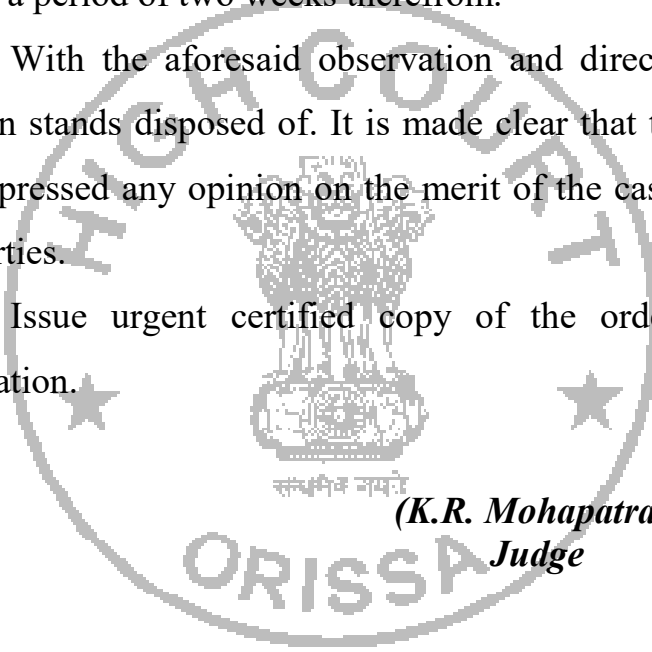
6. Section-71 (1) of the Registration Act, 1908 provides that every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situated within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No.2, and endorse the words "*registration refused*" on the document; and, on application made by any person executing or claiming under the

document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.

7. Accordingly, it is directed that in the event of production of certified copy of this order by the Petitioner within a period of two weeks hence, Opposite Party No.4-Sub-Registrar, Panposh shall do well to take a decision with regard to registration of the sale deed in question. If he is of the opinion that the document /instrument cannot be registered, it shall supply the reasons of refusal of registration of the document within a period of two weeks therefrom.

8. With the aforesaid observation and direction, the writ petition stands disposed of. It is made clear that this Court has not expressed any opinion on the merit of the case of either of the parties.

Issue urgent certified copy of the order on proper application.

The seal of the Orissa High Court is a circular emblem. It features the Ashoka Lion Capital in the center, with the motto 'Satyameva Jayate' in Devanagari script below it. The words 'HIGH COURT' are written in an arc at the top, and 'ORISSA' is written in an arc at the bottom. Two stars are positioned on either side of the central emblem.
(K.R. Mohapatra)
Judge