

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.30395 OF 2022

*In the matter of an application under Articles 226 & 227
of the Constitution of India.*

Rabi Gochhayat & ors.

: Petitioners

-Versus-

State of Odisha & ors.

: Opp.Parties

For Petitioners

: M/s.S.K.Dash, Adv.,
Mr.A.K.Otta, S.Das, N.K.Das,
A.Sahoo, E.Dash & P.Das

For O.Ps.1 TO 4

: Mr.S.Mishra, ASC

For O.P.5

: Mr.A.K.Kanungo

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 21.11.2022

1. On consent of the Parties, this matter is taken up for final hearing and disposal.
2. The Writ Petition involves a challenge to the impugned order under Annexure-3, particularly the conditions imposed in transfer of the properties involved therein by the Tahasildar, Athamallik.
3. Undisputed fact remains, there is transfer of property from Scheduled Caste to Scheduled Caste. Learned counsel for the Petitioners in reference to the provision at Section 22 of the O.L.R. Act submits,

once there is transaction involved, the property belonging to the Scheduled Caste in favour of a Scheduled Caste, no condition under the provision of Section 22 of the O.L.R. Act is attracted. It is next to reading through the condition in the impugned order under Annexure-3, learned counsel for the Petitioners submits that the direction contained therein remains contrary to the provision at Section 22 of the O.L.R. Act and there is failure of discharge of responsibility and judicial exercise by the Tahasildar, Athamallik.

4. There is no denial to the submission of the learned counsel for the Petitioners by the learned counsel appearing for the private O.P.5.

5. Mr.S.Mishra, learned Additional Standing Counsel for the State, however, in reference to the provision at Section 22 of the O.L.R. Act attempted to submit that for the proviso there and the condition attached through Section 22 of the O.L.R. Act, it may be wrong in submitting that the impugned order remains contrary to the provision of Section 22 of the Act.

6. Considering the rival contentions of the Parties and keeping on record that undisputedly, the transaction involved between the Scheduled Caste and Scheduled Caste, this Court proceeds to examine whether the transaction in between the same caste, particularly the Scheduled Castes invites the restriction of the requirement of permission through Section 22 of the O.L.R. Act ?

7. This Court takes note of the provision at Section 22 of the O.L.R.

Act, which reads as follows :-

“22. Restriction on alienation of land by Scheduled Tribes-

(1) Any transfer of a holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of—

(a) a person belonging to a Scheduled Tribe or

(b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer :

Provided that in case of a transfer by sale the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bona fides thereof.

(2) The State Government may having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification direct that the restrictions provided in subsection (1) shall not apply to lands situated in such area or belonging to any particular tribe throughout the State or in any part of it.

(3) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Tribe.

(4) Notwithstanding anything contained in any other law for the time being in force where any document required to be registered under the provisions of clause (a) to clause (e) of subsection (1) of section 17 of the Registration Act, 1908 purports to effect transfer of a holding or part thereof by a raiyat belonging to a Scheduled Tribe in favour of a person not belonging to a Scheduled Tribe, no registering officer appointed under that Act shall register any such document, unless such document is accompanied by the written permission of the Revenue Officer for such transfer.

(5) The provisions contained in sub-sections (1) to (4) shall apply, mutatis mutandis, to the transfer of a holding or part thereof of a raiyat belonging to the Scheduled Caste.

(6) Nothing in this section shall apply –

(a) to any sale in execution of a money decree passed, or to any transfer by way of mortgage executed, in favour of any

scheduled bank or in favour of any bank to which the Orissa Co-operative Societies Act, 1962 applies; and

(b) to any transfer by a member of a Scheduled Tribe within a Scheduled Area.”

Reading through the provision at Section 22 of the O.L.R. Act, this Court finds, there is clear exclusion of attraction of the provision in the event the transaction is between a Scheduled Tribe and a Scheduled Tribe or Scheduled Caste and Scheduled Caste.

8. In the circumstance, while observing that there was no necessity for the Petitioners to move the Competent Authority even for permission, entering into the rejection order, this Court finds, the Tahasildar, Athamallik has not passed the order in terms of Section 22 of the O.L.R. Act. In the circumstance, this Court interferes in the impugned order at Annexure-3 and sets aside the same. Registration involving such transaction if sought for by the Petitioners, there may not be any difficulty in entertaining the registration.

9. The Writ Petition succeeds but however there is no order as to cost.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 21st November, 2022/M.K.Rout, A.R.-cum-Sr.Secy.