

(2019) 03 OHC CK 0059
In the Orissa High Court
Case No : O.J.C. No.5170 Of 2002

Belmati Pradhan (dead) And Others		APPELLANT
	Vs	
Jaya Krushna Singh Rai And Others		RESPONDENT

Date of Decision : 29-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Orissa Land Reforms Act, 1960 — Section 22, 22(1), 23

Citation : (2019) 03 OHC CK 0059

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Jyotsnamayee Sahoo, Swyambhu Mishra, Siva Mohanty,

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J

1. This petition challenges the order dated 30.3.2002 passed by the Collector, Balangir, opposite party no.5, in OLR Revision No.8 of 2001. By the said order, opposite party no.5 allowed the revision and set aside the order dated 16.11.2001 passed by the Additional District Magistrate, Balangir, opposite party no.4, in OLR Appeal No.6 of 2001, whereby and whereunder the appellate authority set aside the order dated 21.8.2000 passed by the Sub-Collector, Balangir, opposite party no.3, in R.C. No.1/93.

2. Adumbrated in brief, opposite party nos.1 and 2 filed an application under Sec.23 of the Orissa Land Reforms Act, 1960 (â??OLR Actâ??) before the Sub-Collector, Balangir, opposite party no.3, to declare the sale deed void and restore possession, which was registered as R.C. No.1 of 1993. It is stated that they are scheduled tribe persons. They belonged to caste â??Gondâ??. The land was recorded in the name of their father, Chitrabhanu

Singh Rai. The petitioners are non-scheduled tribe persons. The father of opposite party nos.1 and 2 had transferred the land in favour of the predecessor-in-interest of the petitioners by means of a registered sale deed dated 27.10.65 without obtaining permission from the Revenue Officer under Sec.22 of the OLR Act.

3. Pursuant to the notice, the petitioners, who are opposite parties in the proceeding, appeared and filed show cause stating that the petitioners, opposite party nos.1 and 2 herein, are Raj Gond by caste. They do not belong to caste 'Gond'. The caste 'Raj Gond' is not included in the Constitution (Scheduled Tribes) Order, 1950. 'Raj Gond' and 'Gond' are two different castes. No permission was required for alienation of the land. Their vendor, Chitrabhanu Singh Rai was a literate person. In the sale deed, he described his caste as 'Raj Gond'. He was the ex-zamindar of Loisingha. He sold the land in favour of Madhusudan Padhan, predecessor-in-interest of the petitioners, by means of a registered sale deed for a consideration of Rs.5040/- and delivered possession. Chitrabhanu Singh Rai had also executed an agreement to sell in favour of one Bhaskar Behera and others described his caste as 'Raj Gond'.

4. Parties led evidence, oral and documentary. In course of hearing, the opposite party nos.1 and 2 stated that they belonged to 'Gond' by caste. But in the ROR, their caste has been mentioned as 'Raj Gond'. Their father was the zamindar of Loisingha. In 1936 settlement, he was bestowed with the title of 'Raja' by the erstwhile Raja of Patna State. After 1936 settlement, he used to write Raja before their caste, though he belonged to 'Gond' caste. The opposite party no.3 came to hold that the caste of opposite party nos.1 and 2 is 'Gond', not 'Raj Gond'. They belonged to 'Gond' by caste. They are scheduled tribe persons. No permission was accorded by the authority. The deed is void one.

Accordingly, it restored the possession of the land to them and issued writ of delivery of possession of the same. The petitioners filed OLR Appeal No.6 of 2001 before the Additional District Magistrate, Balangir. The appellate authority held that in the sale deed, Chitrabhanu Singh Rai has mentioned his caste as 'Raj Gond'. No authority can interpret 'Raj Gond' as 'Chief Gonds' or it is synonymous to 'Gond'.

The caste 'Raj Gond' does not find place in the Constitution (Schedule Tribes) Order, 1950. No permission under Sec.22 of the OLR Act is

necessary for alienation of land. Held so, it allowed the appeal. The opposite party nos.1 and 2 filed OLR Revision Case No.8 of 2001 before the

Collector, Balangir. The Revisional Authority came to hold that 'Raj Gond' is synonymous to the caste 'Gond'. Held so, it allowed the revision.

5. Counter affidavit has been filed by the opposite party nos.3 to 5 stating inter alia that Chitrabhabu Singh Rai, vendor of the petitioners, belonged to

'Raj Gond' and not 'Gond'. His caste has been recorded as 'Raj Gond' in the settlement ROR of 1936 and 1976 respectively. The

caste 'Raj Gond' does not find place in the Constitution (Scheduled Tribes) Order, 1950. Raj Gond is not synonymous to the caste

'Gond'.

6. Heard Mrs. Jyotsnamayee Sahoo, learned Advocate, on behalf of Mr. Manoj Kumar Mishra, learned Senior Advocate for the petitioners and Mr.

Swyambhu Mishra, learned A.S.C. for the opposite party nos.3 to 6 and Miss Siva Mohanty, learned C.G.C. for opposite party no.7. None appeared

for the opposite party nos.1,2, 8 to 17.

7. Mrs. Sahoo, learned Advocate for the petitioners, submitted that Chitrabhanu Singh Rai was not a scheduled tribe person. Thus permission under

Sec.22 of the OLR Act was not a sine qua non for alienation of the land. Elaborating the submission, she submitted that caste of Chitrabhabu Singh

Rai is 'Raj Gond'. Raj Gond and Gond are not synonymous. The caste of Chitrabhanu Singh Rai has been mentioned as 'Raj Gond' in

the sabik as well as the settlement ROR. The caste 'Raj Gond' has been inserted in the Constitution (Scheduled Tribes) Order in the year 2003.

But the sale deed was executed in the year 1965. She placed reliance on the decision of the apex Court in the case of STATE OF

MAHARASHTRA VS. MILIND AND OTHERS, (2001) 1 SCC 4.

8. Learned A.S.C. and learned C.G.C. submitted that the caste 'Raj Gond' is not synonymous to 'Gond'. Thus no permission was

required for alienation of the land.

9. In MILIND AND OTHERS, the question arose before the Constitution Bench that whether it is permissible to hold inquiry and let in evidence to

decide or declare that any tribe or tribal community or part of or group within any tribe or tribal community is included in the general name even

though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order, 1950 ? The apex Court held:

â??36. xxx xxx xxx

1. It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribe or

tribal community is included in the general name even though it is not specifically mentioned in the entry concerned in the Constitution (Scheduled Tribes) Order,

1950.

2. The Scheduled Tribes Order must be read as it is. It is not even permissible to say that a tribe, sub-tribe, part of or group of any tribe or tribal community is

synonymous to the one mentioned in the Scheduled Tribes Order if they are not so specifically mentioned in it.

3. A notification issued under clause (1) of Article 342, specifying Scheduled Tribes, can be amended only by law to be made by Parliament. In other words, any tribe

or tribal community or part of or group within any tribe can be included or excluded from the list of Scheduled Tribes issued under clause (1) of Article 342 only by

Parliament by law and by no other authority.

4. It is not open to State Government or courts or tribunals or any other authority to modify, amend or alter the list of Scheduled Tribes specified in the notification

issued under clause (1) of Article 342.

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10. In view of the authoritative pronouncement of the decision of the Constitution Bench in the case of MILIND, no roving inquiry is permissible to

ascertain as to whether the caste â??Raj Gondâ?? is synonymous to â??Gondâ??. The Sub-Collector, Balangir, opposite party no.3, as well as the

Collector, Balangir, opposite party no.5, travelled beyond their jurisdiction making roving inquiry. The same is impermissible.

11. In the ROR of the year 1936 as well as 1976, the caste of Chitrabhanu Singh Rai has been mentioned as â??Raj Gondâ??. He alienated the land

