

(2014) 12 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. Nos. 5015 and 5104 of 1994

Khirod Rout

APPELLANT

Vs

Bhakta Charan Meher and Others

RESPONDENT

Date of Decision : 11-12-2014

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, 23

Citation : (2015) 119 CLT 1130

Hon'ble Judges : B.K. Nayak, J.

Bench : Single Bench

Advocate : B. Sahu, for the Appellant; D.K. Mishra, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Nayak, J.

1. Both these Writ Petitions arise out of the common order passed by the Collector, Sundargarh in Revision Case Nos. 3 & 4 of 1991 affirming the common Appellate order passed by the Additional District Magistrate, Sundargarh in OLR Appeal Nos. 4 & 6 of 1990 whereby the Additional District Magistrate dismissed OLR Appeal No. 06 of 1990 filed by the present Petitioner's predecessor-in-interest & allowed Appeal No. 04 of 1990 filed by present Opp. Party No. 1 & set aside the order passed by the OSD (LR), Sundargarh in Misc. Case No. 05 of 1987 under Section 23 of the OLR Act (in short "the OLR Act".) Therefore, both the Writ Petitions are heard analogously & disposed of by this common order. The predecessor-in-interest of the present Petitioner, namely, Indu Pandey & her father, Samaru Pandey filed an application before the Officer-on-Special Duty, Sundargarh under Section 23 of the OLR Act giving rise to registration of Misc. Case No. 5 of 1987 for declaring the sale deed void under which Samaru Pandey had sold the disputed properties under eleven numbers of plots to Opp. Party No. 1 & for restoration of possession of the same, on the ground that the sale was without permission of the competent authority under Section 22 of the OLR Act.

The registered sale deed in respect of the land was executed on 15.12.1978. The claim of the Petitioner was that they belonged to "Keuta" caste which is a Scheduled Caste within the Presidential Order for the State of Orissa. So far as the disputed plot No. 378 is concerned, the sale was Ac.1.50 out of a total area Ac.1.99 of the said plot. Though by his final Order Dated 23.5.1990 (Annexure-3), the Sub-Collector came to conclusion that the sale was effected prior to the inclusion of "Keuta" caste in the Presidential Order, he allowed the petition & directed for restoration of the disputed property in favour of the Petitioner's predecessor, Indu Pandey. So far as Plot No. 308 is concerned, the Sub-Collector allowed only restoration of Ac.0.49 dec. as against the claim of Ac.1.50 decimals.

2. Aggrieved by the order for partial restoration in respect of plot No. 308, Indu Pandey filed Appeal No. 6 of 1990, whereas Opp. Party No. 1 challenged the whole order of restoration by filing Appeal No. 4 of 1990 before the Additional District Magistrate, Sundargarh. Both the appeals were heard & disposed of by common Order Dated 25.04.1991 under Annexure-2 holding that the vendor of Opp. Party No. 1 was not a Scheduled Caste as the caste "Keuta" does not come within the caste "Dewar" which was included in the Presidential Order. Accordingly, the Additional District Magistrate allowed Appeal No. 4 of 1990 & dismissed Appeal No. 6 of 1990 & set aside the order passed by the Sub-Collector.

3. Being aggrieved by the common Appellate order Indu Pandey filed two revisions bearing Revision Case Nos. 3 & 4 of 1991 before the Collector, Sundargarh. The revisional authority confirmed the Appellate order & dismissed both the revisions which have been assailed in the present two writ applications.

4. Samaru Pandey, father of Indu Pandey having died during pendency of the original proceeding before the Sub-Collector & he having no other legal heir except Indu Pandey, his name was deleted. During the pendency of the Writ Petition, Indu Pandey, the original Petitioner having died she has been substituted by one Khirod Rout, son of Pyari Rout.

5. Admittedly Samaru Pandey, the vendor of the present Opp. Party No. 1 belonged to "Keuta" caste. It is also undisputed position that on the date of the sale the caste "Keuta" was not included in the Presidential Order as a Scheduled Caste for the State of Orissa. Relying on a decision of this Court in Narayan Behera Vs. State of Orissa and Others, , the authorities went to consider whether the caste "Keuta" can be considered to be synonymous to or a sub-caste of the caste "Dewar" which was included in the Presidential Order as Scheduled Caste for the State & on assessment of the evidence they came to hold that the vendor's caste was not synonymous to or a sub-caste of the caste "Dewar" &, therefore, he was not a scheduled caste.

6. The decision on which the authorities relied upon is no more good law today inasmuch as it is now well settled in a catena of decisions of the Apex Court

reported in State of Maharashtra Vs. Milind and Others, decisions to the effect that a caste which is not specifically included in the Presidential Order cannot be treated to be a Scheduled Caste or Scheduled Tribe & no enquiry with regard to the question whether such caste is synonymous to or a sub- caste or a branch of any other caste, named as Scheduled Caste or Scheduled Tribe in the Presidential Order is permissible. Similar view has also been expressed by this Court in several decisions including Rama Chandra Sahoo v. Collector, Mayurbhanj & others: 82 (1996) CLT 155. In view of the undisputed position that caste "Keuta" was not included in the Scheduled Caste Presidential Order for the State of Orissa on the date of the sale made in favour of Opp. Party No. 1 permission for such sale under Section 22 of the OLR Act was not necessary. Therefore, the sale cannot be said to be void or invalid for want of such permission. Therefore, there is no infirmity in the impugned orders & accordingly the Writ Petitions are dismissed.