

(2007) 01 OHC CK 0019
In the Orissa High Court

Kshetramohan Dwary and Another

APPELLANT

Vs

Sub-Divisional Officer-cum-Revenue Officer and Others

RESPONDENT

Date of Decision : 10-01-2007

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 22, 23, 59(1)

Citation : (2007) 103 CLT 296 : (2007) 1 OLR 328

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The orders passed by the O.L.R. authorities, vide Annexures-2 and 3 to this Writ application, in a proceeding u/s 23 of the Orissa Land Reforms Act declaring a sale deed executed in favour of one Kshetramohan Dwari, the original Writ Petitioner, who having expired during pendency of this Writ application has been substituted by the present Petitioners, are assailed before this Court.

2. The scenario of the case is that aforesaid Kshetramohan Dwari and his son Harilal Dwari had purchased the disputed land from one Jyotish Chandra Patra, the present Opposite Party No. 4, by a registered sale deed. In the year 1986 said Jyotish Chandra Patra filed a petition before the Revenue Officer u/s 23 of the OLR Act inter alia stating that he belonged to a Scheduled Caste community being a "PANO" by caste and therefore the sale deed executed by him as aforesaid without due permission as mandatorily required under law was ab initio void and accordingly he prayed restoration of the land to his possession. The said petition of Jyotish Chandra Patra was registered as OLR Case No. 42 of 1986 in the Court of the Revenue Officer, Baripada. Kshetramohan, the predecessor-in-interest of the present Petitioners, took the plea before the Revenue Officer that Jyotish Chandra Patra was not a person of any Scheduled Caste community and as such the sale deed was legal and a valid one.

3. To substantiate the plea that he belonged to a Scheduled Caste community, Jyotish Chandra Patra filed a record of-rights which revealed that his caste was "PANO" but then no other material like caste certificate, etc. was produced before the Revenue Officer. By order dated 13-2-1989 (Annexure-1) the Revenue Officer dismissed the OLR Case on the ground that sufficient materials were not produced to establish that the vendor was a PANO. Being aggrieved by the order of the Revenue Officer, Jyotish Chandra Patra preferred an appeal before the Learned Addl. District Magistrate, Mayurbhanj which was registered as OLR Appeal Case No. 47 of 1989. Before the Appellate authority apart from producing the ROR indicating that Jyotish Chandra Patra belonged to a Scheduled Caste community, a caste certificate issued in his favour under the provisions of the Miscellaneous Certificate Rules showing that he being a "PANO" by caste belonged to a Scheduled Caste community, was also filed. Though certain objections were raised by the predecessor-in interest of the present Petitioners, the Appellate authority after scrutinizing the caste certificate produced by Jyotish Chandra Patra and an ROR standing in his name and being satisfied that he was member of a Scheduled Caste community and no prior permission as mandatorily required had been obtained under Sections 22 and 23 of the OLR Act before executing the sale deed in question, arrived at the conclusion that the sale deed was void and illegal. Having come to such conclusion the Appellate authority by Order passed on 22-1-1991, vide Annexure 2, directed restoration of the land in question in favour of Jyotish Chandra Patra. Being aggrieved by the Appellate Order Annexure 2, the predecessor-in interest of the present Petitioners and others filed a Revision before the Collector, Mayurbhanj u/s 59(1) of the OLR Act which was registered as OLR Revision Case No. 1 of 1991. The said Revisional authority after perusing all the materials available on record and being satisfied that Jyotish Chandra Patra was a member of a Scheduled Caste community being a "PANO" by caste, by Order dated 15-2-1992, vide Annexure-3, upheld the order of the Appellate authority. Aggrieved by such order, the predecessor-in-interest of the present Petitioners filed this Writ application.

4. According to Learned Counsel for the present Petitioners, the noting of caste in an ROR is only prima facie and does not conclusively prove the caste of a person. He further submitted that no caste certificate was produced before the Revenue Officer, but then such a certificate was produced before the Appellate authority and no opportunity was given to the predecessor-in-interest of the Petitioners to refute such fact. Accordingly it is submitted that the Appellate authority illegally allowed the Appeal and the order of the Appellate authority has also been illegally upheld by the Revisional authority.

5. The submissions of the Learned Counsel for the Petitioners are strongly repudiated by the Learned Counsel for present Opposite Party No. 4 Jyotish Chandra Patra, as also by the Learned Counsel for the State. Relying on the caste certificate of Opposite Party No. 4, his Learned Counsel submitted that mention of caste in the ROR conclusively proves the caste of the said Opposite Party as

"PANO" and a caste certificate has also been issued confirming such stand that he belonged to a Scheduled Caste community. Thus, it is submitted, there was no ambiguity with regard to caste of Opposite Party No. 4. He further submitted that no steps whatsoever were taken by the predecessor-in-interest of the present Petitioners to disprove the said fact by filing any additional evidence under Order 41, Rule 27 CPC before the Appellate or Revisional authority. He then submitted that even before this Court no material has been produced by the Petitioners in support of the stand that Opposite Party No. 4 is in fact not a "PANO" by caste, and consequently not a member of any Scheduled Caste community.

6. Learned Addl.Govt. Advocate submitted that both the Appellate and Revisional authorities having vividly discussed the evidence and other materials available on record and having arrived at the concurrent finding that Opposite Party No. 4 being a "PANO" by caste belonged to a Scheduled Caste community, this Court may not interfere with the same exercising Certiorari jurisdiction.

7. I have heard the Learned Counsel for the parties at length. According Mr Pradhan, Learned Counsel appearing for the Petitioners, Opposite Party No. 4 never disclosed that he was a member of any Scheduled Caste community and in fact deceived their predecessor-in-interest by wrongly mentioning his caste in the sale deed executed by him. No copy of the sale deed in question has been annexed to this Writ application. A perusal of the orders of the Appellate and Revisional authorities vis-a-vis the recording of the caste mentioned in the record-of-rights and the caste certificate issued by a statutory authority leads to an irresistible conclusion that both the said authorities took all the facts into consideration and arrived at a concurrent finding. The ROR coupled with a caste certificate granted by a statutory authority revealed the caste of Opposite Party No. 4 as "PANO", and as such he belonged to a Scheduled Caste community. Admittedly no permission as required under the OLR Act was obtained before execution of the sale deed. Thus the sale deed suffered from the vice of non observance of the mandatory requirements of the Act and therefore no right, title or interest passed thereunder, the same being a nullity in the eye of law.

8. Law is well settled that this Court while exercising Certiorari jurisdiction should not interfere with a finding of fact unless of course satisfied that the said finding was arrived at not on the basis of materials available on record or on wrong interpretation of evidence. Perusal of the orders of the Appellate and Revisional authorities reveals that the said authorities arrived at a concurrent finding which was just, proper and inconsonance with law. There being no error apparent on the face of the said orders, this Court declines to interfere with the same and dismisses this Writ application.