IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.17774 of 2026

ODHC010423102026

(An application under Articles 226 and 227 of the Constitution of India)

Binoy Krishna Das ..... **Petitioner**

- Versus -

State of Odisha & Others ..... **Opp. Parties**

Advocate(s) appeared in this case: -

For Petitioner : Mr. N.M. Praharaj, Advocate

For Opp. Parties : Mr. S.N. Patnaik,
[Additional Government Advocate]

CORAM:
JUSTICE SASHIKANTA MISHRA

JUDGMENT
16th October, 2026

SASHIKANTA MISHRA, J.

Refusal by the registering authority to register the sale deed presented by the petitioner is under challenge in this writ application.

2. The brief facts of the case are that the petitioner is a resident of the State of Jharkhand but because of his trading business, he resides in Baripada on rent. He owns

landed property measuring Ac.0.14 decimals appertaining to Khata No.182/52, Plot No.311/906, situated at Mouza-Gangraj, Tahasil-Kuliana, District-Mayurbhanj, Odisha, which stands recorded in his name in the ROR. He belongs to the 'Bhuiya' caste, which is a Scheduled Caste in Jharkhand. Caste Certificate, Aadhaar Card and Pan Card have been issued in his favour depicting his caste as such. The petitioner decided to dispose of the aforementioned property in order to meet the medical expenses of his treatment and also to clear a hand loan. Accordingly, he contacted one Manas Ranjan Sethy, a person belonging to the Scheduled Caste to purchase the property. As per agreement, the purchaser paid Rs.10,00,000/- to the petitioner and took possession of the property. A sale deed was prepared on 17.03.2026 and presented before the Tahasildar, Kuliana for registration by paying stamp duty and registration fees. The Sub-Registrar refused to accept the instrument but did not pass any order.

3. The petitioner filed a petition on 24.03.2026 before the District Registrar-cum-A.D.M., Mayurbhanj for necessary

direction to the Sub-Registrar. However, by letter dated 23.04.2026, the petitioner was informed that 'Bhuiya' belongs to Scheduled Tribe category and as per Section 3(1) and Section 3(1)(iii) of Odisha Regulation 2 of 1956, he was required to obtain permission of the competent authority to sell the property. He was asked to resubmit the sale deed after obtaining such permission. According to the petitioner, he being a Scheduled Caste person in Jharkhand, has to be treated as such in the State of Odisha, as he cannot become a member of the Scheduled Tribe Community. The provisions of Regulation 2 of 1956 do not apply to a Scheduled Caste person. Since the caste cannot be changed, the petitioner has to be treated as Scheduled Caste and as the purchaser is also a Scheduled Caste person, no permission is necessary. On such facts, the Writ Petition has been filed seeking the following relief: -

> *"The petitioner therefore, prays that this Hon'ble Court graciously be pleased to issue a writ in the nature of mandamus or any other appropriate writ/order(s)/direction(s) directing the Opposite Party No.4 (Sub-Registrar-cum-Tahasildar, Kuliana) to accept the instrument for registration and to pass any other appropriate order(s) as this Hon'ble Court deems fit and proper:*

And for this act of kindness, the petitioner as in duty bound shall ever pray."

4. The State has not filed any counter but the State counsel preferred to make oral submissions.

5. Heard Mr. N.M. Praharaj, learned counsel for the Petitioner and Mr. S.N. Patnaik, learned Additional Government Advocate for the State.

6. Mr. Praharaj would argue that caste is a birth-based identity, which cannot be changed. The caste inherited by a person from his parents is a permanent social status. Therefore, the petitioner being a Scheduled Caste person in the State of Jharkhand has to be treated as a Scheduled Caste in Odisha. Though, the same caste, 'Bhuiya', is included in the Scheduled Tribe in Odisha, the petitioner cannot be treated as a Scheduled Tribe person. According to Mr. Praharaj therefore, Regulation 2 of 1956 will not be applicable at all. Moreover, he does not claim any benefit like reservation in service etc. on account of his caste. Mr. Praharaj sums up his argument by submitting that since in the instant case, he being the vendor as well as the vendee

belong to the Scheduled Caste, no permission as contemplated under Section 22 of the OLR Act is necessary to sell the property.

7. Per contra, Mr. Patnaik, learned Additional Government Advocate would submit that 'Bhuiya' is a Scheduled Caste in the State of Jharkhand but is included in the list of Scheduled Tribes in the State of Odisha. Therefore, unless the petitioner obtains a caste certificate depicting him as Scheduled Tribe in Odisha, he cannot be allowed to sell his property to the vendee, who admittedly is not a Scheduled Tribe person. The provisions of the Regulation 2 are mandatory and therefore, the registering authority cannot be faulted for refusing to register the instrument.

8. This Court has heard the parties at length and has given its anxious consideration to the contentions raised. Having done so, this Court is unable to persuade itself to accept either contention, the reasons for which are delineated hereinafter.

9. Admittedly, the petitioner is treated as Scheduled Caste person in the State of Jharkhand. In Odisha, 'Bhuiya' is not a Scheduled Caste but included in the list of Scheduled Tribes. Two questions arise for consideration- firstly, whether it is permissible for a person to carry his caste-based identity while migrating and claim any benefit in another State and, secondly, whether the petitioner in the instant case, can be treated as Scheduled Tribe since the very same caste is included in the list of Scheduled Tribes in Odisha. In this regard, it would be apposite to refer to the relevant provisions of the Constitution namely, Articles 341 and 342 which are reproduced below: -

> *"**341. Scheduled Castes***
> *(1)The President may with respect to any State or Union territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or group within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union territory, as the case may be.*
> *(2)Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.*
>
> ***342. Scheduled Tribes***
> *(1)The President may with respect to any State or Union territory, and where it is a State after*

consultation with the Governor thereof, by public notification specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.
(2)Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

[Emphasis added]

10. On a plain reading of these provisions, it would be clear that the notification specifying the caste or the tribe shall be in relation to a State or Union Territory, as the case may be. In other words, it is region-specific and not person-specific. It is no longer *res integra* that when a person travels from one State to another, his status does not travel with him for the purpose of being treated as Scheduled Caste or Scheduled Tribe, as the case may be. In the case of ***Marri Chandra Shekhar Rao V. Seth G.S. Medical College***[1], the Supreme Court was seized of a similar question. Interpreting Articles 341 and 342, the Court recognized that a person does not cease to belong to his caste by migration, but held that: -

[1] (1990) 3 SCC 130

*"**10.** It has, however, to be borne in mind that a man does not cease to belong to his caste by migration to a better or more socially free and liberal atmosphere.*

xx xx xx

***12.** It is, however, necessary to give proper meaning to the expressions 'for the purposes of this Constitution' and 'in relation to that State' appearing in Articles 341 and 342 of the Constitution. The High Court of Gujarat has taken the view in two decisions, namely, Kum Manju Singh v. Dean, B.J. Medical College [AIR 1986 Guj 175 : 1986 Guj LH 483] and Ghanshyam Kisan Borikar v. L.D. Engineering College [AIR 1987 Guj 83 : 1986 Guj LH 802] to which our attention was drawn, that the phrase 'for the purposes of this Constitution' cannot be and should not be made subservient to the phrase 'in relation to that State' and therefore, it was held in those two decisions that in consequence the classification made by one State placing a particular caste or tribe in the category of Scheduled Castes or Scheduled Tribes would entitle a member of that caste or tribe to all the benefits, privileges and protections under the Constitution of India. A similar view has been taken by the Karnataka High Court in the case of P.M. Muni Reddy v. Karnataka Public Service Commission [1981 Lab IC 1345 (Kant)] . On the other hand, the Orissa High Court in the case of K. Appa Rao v. Director of Posts & Telegraphs, Orissa [AIR 1969 Ori 220 : 35 Cut LT 55] and the Full Bench of the Bombay High Court in M.S. Malathi v. Commissioner, Nagpur Division [AIR 1989 Bom 138 : (1988) 90 Bom LR 532] have taken the view that in view of the expression 'in relation to that State' occurring in Articles 341 and 342, the benefit of the status of Scheduled Castes or Scheduled Tribes would be available only in the State in respect of which the caste or tribe is so specified. A similar view has been taken by the Punjab and Haryana High Court in the case of V.B. Singh v. State of Punjab [ILR (1976) 1 P & H 769] .*

***13.** xx xx xx xx xx*

But when a Scheduled Caste or Tribe migrates, there is no inhibition in migrating but when he migrates, he does not and cannot carry any special rights or privileges attributed to him or granted to him in the original State specified for that State or area or part thereof. If that right is not given in the migrated State it does not interfere with his constitutional right of equality or of migration or of carrying on his trade, business or

profession. Neither Article 14, 16, 19 nor Article 21 is denuded by migration but he must enjoy those rights in accordance with the law if they are otherwise followed in the place where he migrates. There should be harmonious construction, harmonious in the sense that both parts or all parts of a constitutional provision should be so read that one part does not become nugatory to the other or denuded to the other but all parts must be read in the context in which these are used. It was contended that the only way in which the fundamental rights of the petitioner under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) could be given effect to is by construing Article 342 in a manner by which a member of a Scheduled Tribe gets the benefit of that status for the purposes of the Constitution throughout the territory of India. It was submitted that the words "for the purposes of this Constitution" must be given full effect. There is no dispute about that. The words "for the purposes of this Constitution" must mean that a Scheduled Caste so designated must have right under Articles 14, 19(1)(d), 19(1)(e) and 19(1)(f) inasmuch as these are applicable to him in his area where he migrates or where he goes. The expression "in relation to that State" would become nugatory if in all States the special privileges or the rights granted to Scheduled Castes or Scheduled Tribes are carried forward. It will also be inconsistent with the whole purpose of the scheme of reservation. In Andhra Pradesh, a Scheduled Caste or a Scheduled Tribe may require protection because a boy or a child who grows in that area is inhibited or is at disadvantage. In Maharashtra that caste or that tribe may not be so inhibited but other castes or tribes might be. If a boy or a child goes to that atmosphere of Maharashtra as a young boy or a child and goes in a completely different atmosphere or Maharashtra where this inhibition or this disadvantage is not there, then he cannot be said to have that reservation which will denude the children or the people of Maharashtra belonging to any segment of that State who may still require that protection. After all, it has to be borne in mind that the protection is necessary for the disadvantaged castes or tribes of Maharashtra as well as disadvantaged castes or tribes of Andhra Pradesh. Thus, balancing must be done as between those who need protection and those who need no protection, i.e., who belong to advantaged castes or tribes and who do not. Treating the determination under Articles 341 and

342 of the Constitution to be valid for all over the country would be in negation to the very purpose and scheme and language of Article 341 read with Article 15(4) of the Constitution.

xx xx xx"

[Emphasis added]

11. Thus, a person migrating to another State does not carry with him the status of Scheduled Caste or Scheduled Tribe that he enjoys in his original State. His status in the State to which he moves is governed solely by the Presidential notification in relation to that State. The same view was taken by the Supreme Court in the case of ***Action Committee on Issue of Caste Certificate to SCs/STs v. Union of India[2],*** the Supreme Court held as follows: -

"3. On a plain reading of clause (1) of Articles 341 and 342 it is manifest that the power of the President is limited to specifying the castes or tribes which shall, for the purposes of the Constitution, be deemed to be Scheduled Castes or Scheduled Tribes in relation to a State or a Union Territory, as the case may be. Once a notification is issued under clause (1) of Articles 341 and 342 of the Constitution, Parliament can by law include in or exclude from the list of Scheduled Castes or Scheduled Tribes, specified in the notification, any caste or tribe but save for that limited purpose the notification issued under clause (1), shall not be varied by any subsequent notification. What is important to notice is that the castes or tribes have to be specified in relation to a given State or Union Territory. That means a given caste or tribe can be a Scheduled Caste or a Scheduled Tribe in relation to the State or Union Territory for which

[2] (1994) 5 SCC 244

it is specified. These are the relevant provisions with which we shall be concerned while dealing with the grievance made in this petition.

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16. We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of Scheduled Castes/Schedule Tribes or backward classes in a given State would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that State which may be totally non est in another State to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two States but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste bearing the same nomenclature in another State the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter State "for the purposes of this Constitution". This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution. That is why in answer to a question by Mr Jaipal Singh, Dr Ambedkar answered as under:

"He asked me another question and it was this. Supposing a member of a Scheduled Tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local Government, within whose jurisdiction he may be residing the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But so far as the present Constitution stands, a member of a Scheduled Tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is

residing in a scheduled area or a tribal area. So far as I can see, it will be practicably impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.…" Relying on this statement the Constitution Bench ruled that the petitioner was not entitled to admission to the medical college on the basis that he belonged to a Scheduled Tribe in the State of his origin."

[Emphasis added]

12. Plainly understood, the Presidential notification containing the lists of Scheduled Caste and Scheduled Tribe communities is prepared looking at the socio-economic development of the particular caste/tribe *vis-à-vis* the State. The same socio-economic conditions may not exist in another State. That is why, the Supreme Court in the above referred judgments, held that a person cannot carry his caste-based identity and privileges with him while migrating to another State.

13. This also answers the second question framed for consideration by this Court in paragraph - 9 to the effect that no person can claim to be included as a Scheduled Tribe in the State of Odisha, unless the tribe to which he belongs is included in the Presidential notification in relation to that State. Since the petitioner cannot claim to be Scheduled Caste in the State of Odisha for want of

notifying the caste 'Bhuiya' as such, by the same analogy, he cannot be automatically included in the list of Scheduled Tribes either. The entry in the Presidential notification is specific to Odisha and does not extend to a person belonging to the 'Bhuiya' caste in the State of Jharkhand, where it is notified as a Scheduled Caste.

14. The District Registrar-cum-A.D.M. has lost sight of this fundamental aspect by calling upon the petitioner to obtain permission under Regulation 2 of 1956. If the petitioner cannot be treated as a Scheduled Tribe in the State of Odisha, how can the provisions of Regulation 2 of 1956 apply?

15. Obviously, Regulation 2 of 1956 applies only to Scheduled Tribes and Scheduled Tribe means a tribe notified as such for the State of Odisha. It also goes without saying that since the petitioner, in so far as the State of Odisha is concerned, does not belong to either SC or ST, the provisions of Section 22 of the OLR Act would also not be attracted. This Court, therefore, is constrained to observe that the impugned letter asking the petitioner

to resubmit the deed for registration after obtaining permission under Regulation 2 of 1956 cannot be sustained being bad in law, though, not for the reasons cited by the parties before this Court.

16. For the foregoing reasons, the Writ Petition is allowed. The impugned letter dated 23.04.2026 of the District Registrar-cum-ADM, Mayurbhanj is quashed. The Sub-Registrar-cum-Tahasildar, Kuliana is directed to register the sale deed already presented by the petitioner within three days from the date of production of certified copy of this order by the petitioner, subject to compliance with other statutory requirements.

(Sashikanta Mishra)
Judge

16th October, 2026 Puspanjali Ghadai, Jr. Stenographer

Signature Not Verified
Digitally Signed
Signed by: PUSPANJALI GHADAI
Designation: JUNIOR STENOGRAPHER
Reason: Authentication
Location: High Court of Orissa, Cuttack.
Date: 16-Oct-2026 19:17:11