

BY FAX/ E-MAIL

GOVERNMENT OF ODISHA
REVENUE AND DISASTER MANAGEMENT DEPARTMENT

No. Ag-30/2014- 18034 /R&DM dated 1.6.17

From

Sri Chandrashekhar Kumar, IAS
Principal Secretary
Revenue & DM Department

To

Collector, Sundergarh

Sub: Ambiguity in Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956

Ref: *Your letter No. 176 dated 10.03.2017*

Sir,

In inviting a reference to the subject cited above, I am directed say that, instances have come to the notice of the Government that Tahasildars of Scheduled areas are allowing mutation on the basis of the un-probated wills. The Sec. 3 of the regulation prohibits transfer of immovable property by a Scheduled Tribe person to Non- Scheduled Tribe person without permission of the competent authority. Transfer of immovable property has been defined under Regulation-2(f) as follows:-

Transfer of immovable property means mortgage with or without possession, lease, sale, gift, exchange or any other dealings with such property not being a testamentary disposition and includes a charge or contract relating to such property.

Thus taking advantage of exclusion of testamentary disposition from purview of the transfer of immovable property, people not belonging to schedule tribes are getting wills executed by tribal people in their favour and then mutating the lands of tribal people in their names. The Law Department have consulted on the matter. The Law Department have advised that will is executed as per the provisions of Indian Succession Act, 1925. In order to get benefit out of willed property, proof of valid execution of will is required and a heavy burden to prove the due execution of will lies on the beneficiary. Whenever a person comes to mutate the land on the basis of a will, the Tahasildar is required to satisfy himself not only about the bonafides thereof but that the execution of such will by a Scheduled Tribe person is not spurious or detrimental to the interest of Scheduled Tribes. In order to come to a conclusion regarding the genuineness of will various factors are to be considered which cannot be done in a summary proceeding like mutation proceeding. Normally the Civil Courts are competent to decide the question of valid execution of will. Moreover, right, title and interest under a will accrues to the beneficiary only on the death of the testator.

Besides, the Law Department have advised that after the Odisha Land Reforms Act, 1960 came into force extending to the whole of the State of Odisha, the matters relating to the transfer of land by ST & SC people should be dealt as per the provisions of the OLR Act. The provisions of Sec. 3 of the OLR Act have an overriding effect as follows:-

Save as otherwise provide the provisions of this Act shall have effect, notwithstanding anything to the contrary in any other law, custom, usage, agreement, decree or order of the Court.

In view of the overriding effect, the provisions of OLR Act, would prevail over the provisions of Regulation-2 of 1956 which are contrary to provisions of OLR Act. Under Sec. 22 of the OLR Act, "any transfer" of a holding or part thereof by raiyat belonging to Scheduled Tribe in favour of Non-Scheduled Tribe without permission from the competent authority is void. The testamentary disposition does also come within the ambit of "any transfer" and the execution made under Sec. 2(f) of 1956 regulation being contrary to Sec. 22 of the OLR Act, it would override the said particular provision of the Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulation, 1956.

In view of the above views of Law Department, Tahasildars are advised not to mutate land belonging to the Schedule tribes in favour of other people on the strength of unprobated will.

Yours faithfully,

Principal Secretary to Government

By Fax / E-Mail

Memo No. 18035 / R&DM dtd. 1.6.17
Copy forwarded to all Collectors for favour of information and necessary action.

Additional Secretary to Government

Memo No. 18036 / R&DM dtd. 1.6.17
Copy forwarded to all Sub-Collectors / Tahasildars for information and necessary action.

Additional secretary to Government

Memo No. 18037 / R&DM dtd. 1.6.17
Copy forwarded to IMU Cell for information only.

Additional secretary to Government