10. 22.01.2015 On consent of learned counsel, the matter is taken up for its final disposal on merit at the stage of admission.

In this writ application the challenge has been made to the order passed by the Commissioner, Consolidation in Consolidation Revision No.2671 of 2003 confirming the order passed by the Deputy Director, Consolidation, Range-III, Cuttack in Consolidation Appeal No.20 of 2003 setting aside the order of the Consolidation Officer passed in Remand Revision Petition No.4537 of 1997.

2. Facts necessary for the purpose of disposal of the writ application are as under:

2(A). The petitioner by registered sale deed dated 24.06.1981 purchased a piece of land measuring Ac.0.83 dec. from opposite party nos.4 and 5 and it is his case that since then he is possessing the said purchased land mutating in his name and is paying the rent. The petitioners husband had purchased the land appertaining to Plot nos.1485 and 1666 as per the settlement record and under Chaka No.371 under four plots as per the consolidation record. At the stage of preparation of land register, those plots, that the petitioner purchased plots got divided into two L.R. plots, i.e., 1731 and 1750. Plot No.1731 again got divided into three plots. The petitioner being found to be in possession of his purchased property at the time of preparation of land register the same has been prepared. However, there was some wrong recording which led the petitioner to file Revision Case No.4537 of 1997 before the Director, Consolidation and that was remanded to the Consolidation Officer for fresh adjudication. The opposite party nos.4 and 5 did not file any written version. However, from the nature of the claim advanced before the Consolidation Officer, it is seen that they projected a case that the registered sale deed dated 26.04.1981,which is said to have been executed by them being without prior permission from the Sub-Collector as mandatorily required under section 22 of the O.L.R. Act since they belonged to Keuta or Kaibarta sub-caste and as such members of the Schedule Caste is void. So, it is asserted said that the deed, in question, being void the same has no value in the eye of law and no right, title and interest with respect to the property mentioned in the deed of sale can be said to have flowed to the hands of the vendees. No other claim was laid by the vendors of the petitioner.

2(B). The Consolidation Officer after hearing held the petitioner to have acquired right, title, interest and possession in respect of the land covered under the said registered sale deed by virtue of their purchase. So Opposite Party nos. 4 and 5 preferred an appeal. The Appellate Authority having taken note of the Constitution (Scheduled Caste) Orders (Second Amendment) Act, 2002 concluded that the caste of the opposite party nos.4 and 5 were there in the list and then taking into consideration the decision of this Court in case of Narayan Behera Vrs. State, A.IR. 2001 S.C. 393 as also the caste certificate issued by the Tahasildar in their favour held the sale deed as void being not backed by permission required under section 22 of the O.LR. Act. So, this petitioners had to file revision before the Commissioner, Consolidation and that having not yielded any fruitful result, the present writ application has come to be filed.

3. During hearing the learned counsel for the parties submitted that the sole issue in the case is whether the sale deed no.242 dated 24.06.1981 executed by Natabar Tarai and another, the opposite party nos.4 and 5 in respect of the disputed land in favour of the predecessor-in-interest of the petitioner is void for contravention of provision of section 22 of the O.L.R. Act or not.

4. Sub-section 1 of section 22 of the OLR Act provides the restriction on alienation of land by Scheduled Tribes in favour of a person not belonging to Scheduled Tribe without prior permission in writing of the Revenue Officer and Sub-section (5) of said section makes it applicable mutatis mutandis to the transfer of land belonging to Scheduled Caste.

5. Admittedly, Natabar Tarei and other who are Opp. party No. 4 & 5 are Kaibarta or Keuta by caste. These two castes for the State of Odisha came to be included in the list of Schedule Castes by way of amendment by the Constitution (Schedule Castes) Orders (Second Amendment) Act, 2002 receiving Presidential assent on 17/12/2002. Prior to it in the said entry no.24 of the list, it was only Dewar.

6. It may be stated here that this court in case of Narayan Behera V. State of Orissa and others, 1980 (49) CLT 47 had held that Keuta and Kaibarta are synonymous to Dewar and Dhibar. The matter had been carried to the Hon’ble Apex Court and the decision was not interfered with in SLP (Civil) No.1900 of 1980.

Thereafter Constitution Bench of the Apex Court in case of State of Moharashtra V. Milind and others, AIR -2001 SC- 393- finally held:-

A Caste is a Schedule Caste or Tribe is a Schedule Tribe only, if they

are included in the President's Orders issued under Article 341 and 342 for the purpose of consideration in exercise of the power vested in him. The President has issued the Constitution (Schedule Caste) Order 1950 and the Constitution (Schedule Tribes) Order, 1950. Subsequently some Orders were issued under the said Articles in relation to Union Territories and other States and there have been certain amendments in relation to Orders issued by Amendment Act passed by the Parliament.

Referring to the debate of the Constituent Assembly, the explanation of Dr. B.R Ambedkar has been quoted in extensio. All other decisions of the Apex Court rendered by then have also been considered and finally it has been said that such Orders must be read as it is. It is not even permissible to say that Tribe, part of group of any Tribe or tribal community is synonymous to the one mentioned in the Order, if they are not so specifically in it. It is not at all permissible to hold any enquiry or let in any evidence to decide or declare that any Tribe or Tribal community or part of or group even any Tribe or Tribal community is included in the general name even though it is not specifically mentioned in the concerned entry in the Order.

However, in that case the respondent who had already joined in the medical course and had completed the same and was practising as doctor was protected from not being stripped of the advantage and the benefits already derived by them.

In view of the decision in case of Milind (supra) all the decisions of the High Court as also earlier decision of the Apex Court no more held the field and thus no longer remained as good law. In view of the above, now the question here arises as to whether by application of the provision of sec. 22(1) read with section 22(5) of the OLR Act, the registered sale deed dtd. 24.06.1981 can be said to be void considering that the caste Keuta or Kaibarta being subsequently brought in the entry no. 24 of the Scheduled Caste list by Amendment Act of 2002 as retrospective i.e. that such castes if would be deemed to be there in the list from the beginning. It may be stated here that at no point of time since then even despite of the decision in case of Narayan Behera (supra) the sale deed has not been declared void in accordance with the provision of section 23 of the Act.

7. Learned counsel for the petitioner submits that after the Apex Court rendered the decision in case of Milind (supra), the decision in case of Narayan Behera (supra) no more stood to have any effect. Although the benefits and advantages taken by virtue of said decision whether to be taken away or not is a different question altogether. But if a lis is continuing having arisen thereafter no person can take advantage on the basis of that earlier decision in view of decision coming in case of Milind (supra). He further submits that such amendment by which Keuta or Kaibarta were included in the entry no.24 of the list of Schedule Castes for the State of Odisha can never be held to be retrospective.

8. Learned counsel for the Opp. Party vehemently refutes the said submission. He contends again referring to that case of Narayan Behera (supra) that the Amendment in the Order being explanatory and clarificatory one has to be taken as retrospective and it's prospective application is not permissible. He contends that the decision in case of Narayan Behera (supra) having been rendered that there was no community as Dewar and that refers to profession Kaibarta and Keuta who are traditionally accepted as Dhibar profession would be taken as included in term Dewar. So when in pursuance to the same the amendment having been made, it has to be held to be retrospective. He further contends that when caste certificate had already been granted by the competent authority in favour of the Opp. Parties, the same can never be refused to be accepted by any court of law unless cancelled following the due process of law. In this connection he has referred to the decision of this Court in case of Sebati V. Subasi, 2014 (II) OLR- 449, holding said amendment to be retrospective, it being explanatory and declaratory in nature.

9. At the outset, it is necessary to have a survey over the subject of operation of statutes. It is the cardinal principle of construction that every statute is prima facie prospective unless it is so expressly or by necessary implication made to have been retrospective operation. (Keshavan vrs. State of Bombay, AIR 1951 SC 128; Janardan Reddy vrs. State; AIR 1951 SC 124; Mahadeolal Kamodia vrs. Admn. General of West Bengal, AIR 1960 SC 936; State of Bombay vrs. Vishnu Ramchandra, AIR 1961 SC 307; Rafique Nnessa (Mst) vrs Lal Bahadur Chetri, AIR 1964 SC 1511; Arjan Singh vrs. State of Punjab, AIR 1970 SC 703; K.C.Arora vrs. State of Haryana, (1984) 3 SCC 281; Mithilesh Kumari vrs. Prem Bahadur Khare, AIR 1989 SC 1247; State of Madhya Pradesh vrs. Rameswar Rathod, AIR 1990 SC 1849; Shyam Sundar vrs. Ram Kumar, AIR 2001 SC 2472; Zile Singh vrs. State of Haryana, AIR 2004 SC 5100, Gem Granites vrs. Commissioner I.T., (2005) 1 SCC 229 and C.Gupta vrs. Glaxo Smithkline Pharmaceuticals Ltd.,(2007)7 SCC 171.

But the general rule is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statutes sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only nova Constitutio fut

uris formam imponere debet non- practeritis. Doolubadass Pettamberdass vrs. Rammloll Thackoors ey dass; (1850) MIA 109; K.C.Arora vrs. State of Haryana (supra); Zile Singh vrs. State of Har yana (supra); K.S.Paripoornan vrs. State of Kerla, AIR 1995 SC 1012; and Shakti Tubes Ltd vrs. State of Bihar, (2009)7 SCC 673. It is not necessary that an express provision be made to ma ke a statute retrospective and the presumption against the retrospectivity may be rebut ted by necessary implication especially in a case where the new law is made to cure an ack nowledged evil for the benefit of the community as a whole as held in cases-Mithilesh Kumari vrs. Prem Bihari Khara (supra), Zile Singh vrs. State of Haryana (supra), Shakti Tubes Ltd. V rs. State of Bihar (supra).

10. It is relevant and apposite for the instant case to state that the rul e against the retrospective construction is not applicable to a statute merely because a p art of requisite for its action is drawn from a time antecedent to its passing. Held in cas es- Rao Shiv Bahadur Singh vrs. State of Utter Pradesh, AIR 1953 SC 394; UOI vrs. Madan Gopal, AIR 1954 SC 158; State of Bombay vrs. Vishnu Ramchandraq (supra); Sajjan Singh vrs. State of Punjab, AIR 1964 SC 464; Kapur Chand vrs. B.S.Grewal, AIR 1965 SC 1491; Shree Bank Ltd vrs. Sa rkar Dutt Roy & Co., AIR 1966 SC 1953; T.K.Lakshmana vrs. State of Madras, AIR 1968 SC 1489; D .S.Nakara vrs. UOI, AIR 1983 SC 130; R.L.Marwaha vrs UOI, (1987)4 SCC 31 and Dillip vrs. Mohd. Azizul Haq, AIR 2000 SC 1967.

Another very important principle flowing from presumption ag ainst retrospectivity having impact on the point before me is that one does not expect righ ts conferred by the statute to be destroyed by the event which took place before it was pas sed; Birmingham City Council vrs. Walker (2007)3 AII ER 445.

11. In certain cases a distinction is drawn between a existing right and a vested right and it is said that rule against the retrospective construction is applied only to save vested rights and not existing rights; Trimbok Damodhar Raipurkar vrs. Asharam Hiraman Patil , AIR 1966 SC 1758; Shri Bakul Oil Industries vrs. State of Gujarat (1987) 1 SCC 31.

The word retrospective has thus been used in different sense c ausing certain amount of confusion, Gardner & Co. vrs. Cone, (1928) AII ER Rep 458.

The real issue in each case is as to the scope of particular enactment having regard to its language and the object discernible from the statue as a wh ole.

12. At this stage, I refer to a mere recent and more simple statement of the ru le made in case of Secretary of State for Social Security V. Tunnicliffe (1991) 2 AIIER-7 12.

The Words are the true principle is that Parliament is presum ed to have intended to alter the law application to the past events and transactions in a mann er which is unfair to those concerned in them unless a contrary intention appears. It is not s imply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree- the greater unfairness, the more it is to be expected that Par liament will make it clear if that is intended.

The House of Lords have approved this statement in L office Ch erifien des Phopsphates V Yamashita Shinnihon Steamship Co. Ltd (1994) -I - AII ER 20. Th erefore it was observed that question of fairness will have to be answered in respect of a p articular statute by taking into account various factors, viz., value of the rights which th e statue affects; extent to which the value is diminished or extinguished by the suggested retrospective effect of the statute; unfairness of adversely affecting the rights; clarity w hat in use by Parliament and the circumstances in which the legislation was created. All these factors must be weighed together to provide a direct answer to the question whether the social sequences of the original statutes with the suggested degree of the retrospecti vity is so unfair that the words used by Parliament cannot have been intended to mean what they might appear to say. Also in Wilson vrs. First County Trust Ltd, (2003)4 AII ER 97.

13. The negation of giving the retorspectivity is not a rigid rule and varies wit h the intention and purport of the legislation, but to apply it in such a case is a doctrine of fairness. When a new law is enacted for the benefit of the community as a whole, even in t he absence of a provision the statue may be held to be retrospective in nature; Vijay vrs. St ate of Maharastra, (2006)6 SCC 289.

Therefore its fairness to be again tested regard being had to the conferment of special benefits and if the fairness would stand for being held to be retr ospective applicability so as to deprive the persons of the rights which have already accrue d in their favour standing other than the member of said community. Viewing its impact whethe r minimal or colossal and the likely area of the circle being eclipsed thereby.

14. In case of Sobhag Singh V. Jai Singh; AIR-1968 SC- 1328 it has been h eld that a new law requiring sanction of adoption as condition for its authority is not to ap ply to adoption previously made. Similarly, in cases of Thakoor Hurdeo Bux V Thakoor Jowahit Singh (1879) 6-IA -161; Hassanji and Sons vrs. State of Madhya Pradesh, AIR 1965 SC 470 and Dy

Collector vrs. S.Venkata Ramanaiah, (1995)6 SCC 545, the principle laid down is that the statutes dispensing with the formalities which are earlier necessary for making transfers have not the effect of validitating transfers which were lacking in those formalities and which were made prior to such statutes.

Most importantly in a converse way it has been held in case of Ram Krishto vrs. Dhankisto, AIR 1969 SC 204 that a transfer made in contravention of the statutory provision is invalid and is not validated by repeal of the statutes containing the prohibition.

In case of Gurupurappa Mallappa Harkune vrs. Tahsildar, AIR 1992 SC 92, it has been held that The permission obtained to make a transfer under a law which allows transfer or permission is of no avail if the law is amended before the transfer, prohibiting transfer completely.

15. In case of State of Kerala Vrs Philomina; AIR -1976 SC 2363, it has been held that a transfer valid when made is not invalidated by subsequent prohibition.

Even otherwise statutes are construed prospective because it manifestly shocks ones sense of justice that an act, legal at the time of doing it, should be made unlawful by some new enactment; Midland Rly Co. vrs. Pyre (1861) 142 ER, 419 referred to in case of State of Bombay vrs. Vishnu Ramchandra (supra).

16. Now adverting to the facts of the case, it can be well said that the decision in case of Narayan Behera (supra) did no more remain to hold the field after the Hon'ble Apex Court rendered the decision in case of Milind (supra). Thereafter the amendment came into force by way of entry of castes Keuta and Kaibarta. In the instant case for holding the amendment as retrospective for the purpose, we are being faced with a situation to take away the vested right of a person on the basis of a past transaction. So that amendment cannot be said to be explanatory and declaratory in nature for the purpose, we are dealing and concerned. It may be read as explanatory and declaratory so far as the situation concerning the advantages and benefits already provided in favour of persons basing to be belonging to the said castes when the questions come up for their deprivation of such benefits and privileges. The question shocks the conscience, that an innocent person having purchased the property following the law as prevalent at the time of transaction how would be compelled to suffer by such amendment by going to say that the transaction is void by applying the amendment retrospectively. Admittedly, as on that date even if the vendor would have sought for permission as required under the provision of section 22 of the OLR Act, the said application might not have been entertained, since his caste was not there in the list. The decision in case of Milind (supra) certainly stands to prevent all such actions which have taken place as legal as on the date of said action for being remaining unaffected in any way by applying the amendment retrospectively as otherwise I am afraid that said law as declared would be rendered nugatory..

17. In this light, I feel it apposite to place few decisions of different High Courts. In case of Chandrabhaga Bai V. Ladba 2006(I) MHLJ-485 the court is concerned with the question that as to whether a particular tribe is recognized as Schedule Tribe on the date of transfer when admittedly the recognition came by amendment and the transaction was prior to that and if it can be affected and the question of restoration holding the transaction to invalid in the eye of law if permissible in law. It has been stated that status as a Schedule Tribe upon the members of the particular caste is conferred only by such amendment and it cannot be said that it was there in the list by giving retrospective operation. In such matters there must be either clear expression in so many words by the Parliament of such intention or such intention must be gatherable by necessary implication.

18. In case of Mangilal and others vrs. Registered Firm Mittilal Radheylal Rastogi and others; AIR 1978 M.P. 160, the High Court of Madhya Pradesh has held such Amendment Act to be not retrospective in effect. Reference in this connection has again been made to the observation made in that case of Milind (supra) that even by birth a person though born in a Tribal Community , till that Community is recognized, he cannot get that status as Scheduled Tribe. Finally, in that case the contention that amendment is retrospective was repelled and the transaction has been held to be valid.

19. In case of Tukaram V. Piraji; 1989 MJHL 815, it has been held that the status of the parties has to be considered at the time or prior to the completion of transfer. The change in status after the transfer, if any, has no relevance. The parties must have that status of tribal at the time of transfer and not subsequently which cannot be seemed to be the intention of the legislature that they wanted to extent protection to the persons who are Tribal at the time of transfer.

20. In case of Neena Bharati V. State of Jharkhand and others, WP (C) No. 6373 of 2007 disposed of on 07.05.2009 referring to the law settled by the Apex Court, the High Court of Jharkhand has said that a legal right which has been accrued and vested in a person in a rule, circular or policy and has been acted upon cannot be taken way retrospectively. It i

s further said that thus there is no doubt whatsoever that impugned circular or impugned notif ication do not in any way impeach upon power of the President in clause-(1) or the power of th e Parliament under clause-2 of Article 342 of the Constitution, because those do not primari ly with any matter relating to addition to or deletion from the list of Schedule Tribes. There fore, the notifications were found explanatory or at best clarificatory instructions to cater to an unforeseen fact situation not conceived in normal circumstances.

21. Coming to the decision cited in case of Sebati (supra), it may first b e stated here that the matter was referred to Honble Shri Justice I. Mahanty, in view of diffe rence of expression by Honble Shri Justice P.K.Tripathy (as then he was) and Honble Shri Justi ce Pradip Mohanty. It may be stated that in the case challenge was to the acceptance of the no mination of a person in the election for the office of Sarpanch of a Gram Panchayat on the gro und that on the relevant date of acceptance of the nomination he was not a member of the Sched ule Caste as by then the sub-caste Kaibarta was not added in entry no.24 by Constitution (Sche duled Castes) Order by the Second Amendment Act, 2002 which received the Presidential assent on 17.12.2002. Therefore, that person having contested the election for the post of Sarpanch w hich was reserved for the candidate belonging to the Scheduled Caste and won, his election hel d on 21.02.2002 was questioned on the basis that the certificate granted by the Tahasildar on 17.11.2002, when admittedly Kaibarta was not in the list no. 24ought to have been discarded. B y the time it came to be decided by the learned Civil Judge (Junior Division), the Amendment A ct had come into force. So relying the case of Zile Singh (supra) as also the decision in cas e of Narayan Behera (supra) and Milind (supra), the amendment was held to be retrospective be ing declaratory or explanatory in nature.

It is pertinent to mention here that in case of Zile Singh (su pra), the question concerned was in relation to disqualification introduced in the Panchayat L aw for a candidate to contest. There had crept in draftsmens devil in using particular word i. e., after in place of up-to. The amendment was given effect from 05.01.1994. The error being n oticed was amended on 04.10.1994. In that particular disqualification clause for being attract ing disqualification for having more than two children, the cut off date was given i.e. expiry of one year from the commencement of the Act. So the question arose as to whether the amendme nt subsequently carried out by substitution of the word up-to in place of word after would tak e its effect from the date when the original amendment came into force or from the date when s ubsequent amendment was brought in. The Honble Apex Court in that case first of all held that if the word after is read then it leads to a situation inapposite to the intention of legislat ure for which the amendment was brought that the disqualification imposed on a person from pro curement and giving birth of a third child in contesting the office of a member of local body would remain in operation for a period of one year only and thereafter would get lifted incurr ing no disqualification. Therefore, the amendment made subsequently was held to be declaratory in nature and it had cured the draftsmens error. But this is not the situation in our case. I n view of that in case of Sebati (supra) finally this Court refused to take away the benefit o f the candidate being elected to the public office on that basis. In view of aforesaid, the de cision has been rendered as above that such amendment is explanatory and declaratory.

In my humble view it has to be read in the context as it has b een rendered when the question of deprivation of benefit, advantage or privilege already allow ed to the member of those castes coming to be enlisted later by amendment falls for considerat ion. But it cannot be so read and thereby held and applied to take away vested right of a pers on in declaring a valid transaction as invalid by holding the amendment as either explanatory or declaratory in so far as this case is concerned to hold it to be retrospective in operation . In that event it would have extremely serious consequences and cause injustice as well, that for no fault of the beneficiary of the transaction, he would be made to suffer by bringing wi thin the net all such transactions holding as valid since long past. If we further look at the provision of Section 22 of the OLR Act, and also similar prohibition as contained in Orissa S chedule Area (Transfer of Immovable Property by Schedule Tribes) Regulation, 1956, the positio n would be rather clear. Such prohibition is provided to prevent the persons belonging to such Caste or Tribe from being exploited. Therefore, the authority permitting the transfer is unde r obligation to make an inquiry and satisfy himself with regard to such required factors elimi nating all those aspects. When the caste is given birth to in the list either by an entry or c reated afresh or by addition with other castes in an existing entry, it has to be said that at that point of time the Parliament felt the need that the member of such caste and community a re also required to be put at the same pedestal. But that cannot lead to say that the persons belonging to such caste are thereby would be considered to have been as such in the list from the very beginning since the time of promulgation of original order. Such a consideration woul d amount perpetuation of injustice. In order to take away the benefits even in case of exclus ion from the list it is denied to give retrospective operation to the amendment, it is equally to be said that in view of inclusion, those who would have entered into valid transaction pri or to inclusion would not be made to suffer in taking away their vested right and depriving of

the same. This also shocks the judicial conscience. Therefore, for the present purpose holding the amendment as clarificatory or explanatory in nature and thereby giving retrospective effect would not only be running against the doctrine of fairness but also will be unjustified in law as well as on the principles of equity and good conscience. Directly on the point a decision has also been rendered by the Honble Shri Justice B.K.Nayak in case of Bikal Rout vrs. Dhobani Bewa, 2015(I) CLR 211.

In view of the aforesaid discussion and reasons, I am in respectful agreement with the view expressed therein that the said amendment would not bring the prior transaction within the net of Section 22 and 23 of the OLR Act for being held as to be in contravention of the said provisions.

22. Another recent decision of Honble Apex Court in case of R. Unnikrishnan and another vrs. State of Kerala; 2014 (4)SCC 434 is necessary to be placed.

The pronouncement of Apex Court in case of Palghat Jilla Thandan Samudhaya Samrakhua Samiti vrs. State of Kerala, 1994 (1) SCC 359 was in relation to a decision of the State of Kerala not to treat members of the Thandan community belonging to the erstwhile Malabar District, including the present Palghat District, of the State of Kerala as members of the Scheduled Castes. The Court reviewed the legal position and declared that Thandan community having been listed in Scheduled Caste Order as it then stood, it was not open to the State Government or even to the Court to embark upon an enquiry to determine whether a section of Ezhuva/Thiyya which was called Thandan in the Malabar area of the State was excluded from the benefits of the Scheduled Castes Order.

It was further held that in view of the Scheduled Castes Order, the State Government have no say over the matter and it was not open for them to say otherwise as any enquiry into their being Thandans who were Scheduled Caste having been forbidden by the court as legally impermissible. Thereafter, Constitution (Scheduled Castes) Order (Amendment) Act, 2007 came wherein Ezhuves and Thiyyas who are known as Thandan, in the erstwhile Cochin and Malabar areas and Carpenters who are known as Thachan, in the erstwhile Cochin and Travancore State were excluded from Thansan. But the Government of Kerala by order dated 30.08.2010 directed that Ezhuvas and Thiyyas who are known as Thandan in erstwhile Cochin and Malbar shall be treated as OBCs in List III.

In that context when the question arose as regards taking away of the entitlements retrospectively, it has been said in the negative as there is no specific provision to that effect or there arises necessary intendment as there in the Amendment Act, 2007 for the first time there has been introduction of such a difference. So the Court finally set the matter at rest by ordering that the benefits granted to respondent as Scheduled Caste candidate till 30.08.2007 shall not be disturbed but any advantage in terms of promotion or otherwise which the respondents may have been granted after the said date solely on the basis of his being scheduled caste candidate may be withdrawn and that he shall not be entitled to claim any benefit in future as Scheduled Caste candidate but no benefit admissible to him as an OBC candidate shall be denied. Thus retrospective operation to the said amendment was held not permissible so as to take away the benefits already granted in view of exclusion by the amendment.

23. For the aforesaid, the answer to the sole issue as regards the validity of the registered sale deed dated 24.06.1981 has to be rendered that it is not in contravention of the provisions of Section 22 of the OLR Act. In the upshot of the above, the order passed by the Commissioner, Consolidation in Revision No.2671 of 2013 confirming the order of the Deputy Director, Consolidation in Consolidation Appeal No. 20 of 2003 are found liable to be quashed which is hereby done and the order of the Consolidation Officer in Remand Revision Petition No. 4537 of 1997 is restored.

24. Accordingly, the writ application is allowed. No order as to cost.

Narayan

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D. Dash, J.

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