

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7626 of 2011

Radharani Sethi

....

Petitioner(s)

Mr.P.K.Parhi, Advocate

-versus-

State of Odisha & Ors.

....

Opposite Party(s)

Mr.S.Ghose, AGA

Mr.L.Pradhan, Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
22.06.2022**

Order No.

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1. Heard learned counsel appearing for the parties.
2. This writ petition involves the following prayer:

“It is therefore humbly prayed that, this Hon’ble Court may graciously please to admit the writ application, issue notice to the opp. Parties, call for the records from the court below and after hearing allow the writ application and quash the order dated 25.2.11 passed by the opp. Party No.3 in RMC No. 21 of 2005 under Annexure-8.

And further declare the part of the Amendment Regulation, 2000 in Regulation, 1956 as ultra-vires to the Constitution.

And pass any other order/orders, direction/directions as deem fit and proper in the facts and circumstances of the case.

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

3. This writ petition otherwise involves a challenge to the impugned order at annexure-8 initiated under the amended provision under Section 3(B) (3) of Regulation, 2000 on the premises that once there is a valid permission of the competent authority and a sale deed being executed, consequent upon such outcome, any proceeding under Section 3(B) should have involved even assuming there has been indication of amended provision. Further taking to the reason assigned in the impugned order, Mr.Parhi, learned counsel appearing for the petitioner

also contest the impugned order on the premises that in the event there is allegation of fraud, such aspect cannot be decided in a Regulation-2 proceeding. Thus, Mr.Parhi, learned counsel also challenges the impugned order on the premises of authority passing such order in lacks of his power. In the process, Mr.Parhi, learned counsel seeks interference by this Court in the order at Anenxrue-8 and setting aside the same..

4. Mr.Ghose, learned Additional Government Advocate appearing for the State opposite parties more particularly taking this Court to the findings arrived at in conclusion by the competent authority submitted that there appears there has been reason assigned interfering in the impugned order and has attempted to support the impugned order.

5. Mr.Pradhan, learned counsel appearing for the contesting private opposite parties more particularly did not dispute that the application for permission was filed by the father of the present private opposite parties. There is also no denial that their father entering into a sale deed consequent upon grant of permission for sale by the competent authority. Mr.Pradhan, learned counsel however taking to the observation of the competent authority contended that there is no infirmity in the impugned order and for the observation of the competent authority, there involves fraud in the transaction involved. Mr.Pradhan also attempted to justify the impugned order.

6. Considering the rival contentions of the parties and on perusal of Annexure-1, this Court finds Annexure-1 is an outcome of a permission proceeding under the provision of section 3(1) of Regulation-2 of 1956 being initiated by Gane Mallick, Son of Siduna Mallick, Ajaya Mallick, Son of Linja Mallick and Paramananda Mallick, son of Baja Mallick. Perusal of cause title at opposite party nos.6,7 and 8. This Court finds father of all the 3 present petitioners were the applicants seeking permission for sale of their own land. From the observation in Annexure-1 this Court again finds it is only after involvement of the land owners, there has been grant of permission for sale of land by the

competent authority. Matter did not end there. Consequent upon grant of such permission vide Annexure-1, there appears the parties have also entered into a registered sale deed on satisfaction of receipt of value involving the property creating registered sale deed involving the very same disputed property. The sale deed appears to be signed on 14.11.2000 and created on 8.12.2000.

7. Considering there is initiation of suo motu proceeding on behalf of the legal heirs of the original land owners involved in the permission application, this Court otherwise also finds after their father being satisfied with the transaction and entered into registered sale deed, in the event the petitioners have any case on the fraud aspect, it is open to the petitioners to approach the competent court of law to decide on fraud aspect and such aspect cannot have been gone into by the authorities in the Regulation-2 of 1956.

8. For the above background, this Court finds the order is not sustainable in the eye of law. Annexure-8 thus interfered and set aside. Consequently, the writ petition succeeds.

(Biswanath Rath)
Judge