

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1698 of 2022

Suresh Agarwal

....

Petitioner

-versus-

***Additional District Magistrate,
Sundergarh and others***

....

Opposite Parties

CORAM: JUSTICE S. PUJAHARI

ORDER

26.04.2022

Order

No.

02.

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed by the Petitioner with a prayer to quash the order dated 30th December, 2021 passed by the Opposite Party No.1-Additioanl District Magistrate-cum-Registrar, Sundargarh in Misc. Case No.2 of 2020 in exercise of power under Section 47-A of the Indian Stamp (Odisha Amendment) Act, 1899.
3. Heard Mr. Asok Mohanty, learned Senior Counsel appearing for the Petitioner and Mr. N.K. Sahoo, learned counsel appearing for the Opposite Party No.3-Caveator and also the learned counsel for the State.

4. The case of the Petitioner is that he is an auction purchaser of the property auctioned by Recovery Officer, DRT, Cuttack. Thereafter, when the Sale Deed in question was presented for registration, the Registering Authority registered the same. However, on a complaint being made by the debtor, the property was auctioned in throwaway price and not in real market value, the A.D.M.-cum-District Registrar, Sundargarh has initiated a proceeding under Section 47-A(1) of the Indian Stamp (Odisha Amendment) Act, 1899 which empowers him to exercise the power of the Collector to determine whether the property has been satisfying itself regarding the real market value and stamp duty as levyable has been paid or not. In the said proceeding, however taking into consideration the objection, the owner of the property who was nothing to say in the matter even if the A.D.M.-cum-District Registrar, Sundargarh had the jurisdiction to exercise suo motu power, passed in exercise of suo motu jurisdiction, passed order in excess of his jurisdiction.

5. Since order passed was in fragrant violation of the power vested and not in accordance with the mandate of

Section 47-A of the Indian Stamp (Odisha Amendment) Act, 1899, the impugned order is bad. Therefore, this writ petition has been filed to quash the aforesaid order passed by the Additional District Magistrate-cum-Registrar, Sundargarh and remit back the matter with a direction to pass necessary order in accordance with the provision of Section 47-A of the Indian Stamp (Odisha Amendment) Act, 1899 and also given an opportunity of hearing to the Petitioner.

6. Mr. Asok Mohanty, learned Senior Counsel appearing for the Petitioner submits that order of the Additional District Magistrate-cum-Registrar, Sundargarh having been passed in excess of jurisdiction in flagrant violation of power under Section 47(A) of the Indian Stamp (Odisha Amendment) Act, 1899, the same is liable to be quashed and the writ petition deserves to be allowed with the prayer sought for.

7. Mr. N.K. Sahoo, learned appearing for the Opposite Party No.3-Caveator (owner of the property) submits that the appeal being provided against the said order, this Court should loathed in exercise of writ jurisdiction.

8. Learned counsel for the State echoes the submission of learned counsel for the Opposite Party No.3-Caveator.

9. Now dealing with the question of maintainability of the writ petition. No doubt, law has been well settled in catena of decisions by the Apex Court as well as this Court that when a statutory remedy is available, the court should be loath to interfere in a writ petition. However, there is no complete bar to exercise a writ jurisdiction when the authority have acted in flagrant violation of the principles of natural justice, or the provisions of the Act/Rules or acted without jurisdiction.

10. Hence, in the light of the aforesaid, the order impugned has to be examined. For the same, it would be apposite to have a look to the Section 47-A of the Indian Stamp (Odisha Amendment) Act, 1899 and the operative portion of order impugned, which read as thus:-

“47-A. Instruments under-valued how to be dealt with; ¹[(1) Where the registering officer under the Registration Act, 1908, while registering any instrument of conveyance, exchange, gift, partition or settlement has reasons to believe that the market value of the property which is the subject matter of

such instrument has not been rightly set forth in the instrument or is less than the minimum value determined in accordance with the rules made under this Act, he shall, before registering such instrument, refer the matter to the Collector, with an intimation in writing to the person concerned, for determination of the market value of such property and the proper duty payable thereon.]

(2) On receipt of a reference under Sub-section (1), the Collector shall, after giving the parties an opportunity of making their representations and after holding an inquiry in such manner as may be prescribed by rules made under this Act, determine the market value of the property which is the subject-matter of such instrument, and the duty as aforesaid and the deficient amount, if any, shall be payable by the person liable to pay the duty.

(2-A) The Collector may suo motu within ²[three years] from the date of registration of such instrument examine the instrument, not already referred to him under Sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of the market value of the property which is the subject-matter of such instrument and the duty payable thereon and if, after such examination he has reason to believe that the market value of such property has not been ¹[rightly set forth in the instrument or is less than the minimum value determined in accordance with the rules made under this Act], he may determine the market value of such property and the duty as aforesaid in accordance with the procedure provided for in Sub-section (2), and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

3. Any person, aggrieved by an order of the Collector under Sub-section (2) or Sub-section (2-A), may, within thirty days from the date of the order, prefer an appeal before the District Judge and all such appeals shall be heard, and disposed of

in such manner as may be prescribed by rules made under this Act.”

“In view of the above observation, it is felt that the registration has been done without going through the principle “as is & where basis is” & in accordance with the sale certificate dated 13.05.2019 issued by the Recovery Officer, DRT, Cuttack and a wrong valuation certificate obtained from Asst. Engineer (R&B) Division, Rourkela dated 25.05.2019 which was subsequently withdrawn and the registration of the property was beyond the sale schedule issued by the Recovery Officer, DRT, Cuttack on dated 13.05.2019. On enquiring and based on the documentary evidence it is proved that there is certain irregularities at the level of Sub-Registrar, Rourkela, HUDCO Official & Asst. Engineer (R&B) Division, Rourkela during execution of Regd. Sale Deed due to wrong assessment of stamp duty, which causes less stamp duty realization and the registration has been done wrongly calculating the buildable area. So I am inclined to allow this Misc. Case No.02 of 2020 and direct the petitioner to approach before the appropriate forum/Court to annul the wrong registration which has been done by the Sub-Registrar, Panposh between Shri Suresh Agarwal and HUDCO Official bearing Registration No.11711900928 dated 24.05.2019”

11. From the aforesaid order, it would go to show that the Additional District Magistrate-cum-Registrar, Sundargarh has not acted in accordance with the power vested with the Collector, which he has been authorized in accordance with the statutory mandate of Section 47-A of the Indian Stamp (Odisha Amendment) Act quoted supra, but travel beyond the same. The said order of Additional District Magistrate-cum-Registrar, Sundargarh being in excess of the jurisdiction and not in accordance with law.

12. This Court, therefore, is of the view that the same needs to be set aside in exercise of the writ jurisdiction.

13. Therefore, this Court allows the writ petition. Consequently, the order of the A.D.M.-cum-District Registrar, Sundargarh at Annexure-1 is quashed and the matter is remitted back to the Opposite Party No.1-Additional District Magistrate, Sundargarh keeping open all the contentions of the parties regarding maintainability of the said proceeding. Parties shall appear before the Opposite Party No.1-Additional District Magistrate, Sundargarh within six weeks hence with a copy of this order and thereafter a date be fixed by the Additional District Magistrate, Sundargarh and then the said proceeding shall be disposed of in the manner known to law by giving opportunity of hearing to the parties.

(S. Pujahari)
Judge

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