

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.3278 of 2019

Laxmi Devi & others.

....

Petitioners

-versus-

State of Odisha & others.

....

Opposite Parties

CORAM: JUSTICE S.PUJAHARI

ORDER

30.03.2022

Order No.

27.

1. This matter is taken up through Hybrid mode.
2. Heard Mr. Ramakanta Mohanty, learned senior Advocate appearing for the petitioners, Mr. Akshyanshu Nandy, learned counsel appearing for the opposite party no.6 and the learned counsel appearing for the State-opposite party nos.1 to 4.
3. The petitioners have filed this writ petition seeking to quash Annexure-4 series and also direct the opposite party no.4 to register the documents presented by them to transfer the balance land of Plot No.88, Khata No.47 of Village- Unit No.6, Uttara Deula Sahi-1, Cuttack.
4. It is the case of the petitioners that the aforesaid land of the petitioners was never an urban ceiling surplus land.

However, under a misconception that it was held to be urban ceiling surplus land. As such, the petitioners challenging the same came to this Court earlier by filing a writ petition vide OJC No.15417 of 2001 wherein the contention was raised that neither compensation was paid to the petitioners nor the possession of the same was taken over by the Tahasildar, Cuttack Sadar under the said act, as such, it be deleted from the draft statement that it was urban ceiling surplus land. The said writ petition was disposed of by this Court vide order dated 10.01.2003 directing the Government in the Urban Development Department to consider the grant of exemption as suggested by the competent authority in his letter at Annexure-3 and communicate the decision within two months of receipt of this order. The aforesaid order was passed in view of the letter of the competent authority at Annexure-2 to this writ petition. The land was recorded in the name of the predecessors-in-interest of the petitioners vide Annexure-3 series and after their death, in the name of the present petitioners, who are successor-in-interest in respect of the said land. In respect of part of the said land, which was the subject-matter of the said writ petition, portion of the sale has been effected to many persons. However, when remaining portion of the same was going to be sold, for which sale deeds have been executed and approached the Sub-registrar for registration, the Sub-registrar refused to register the same on the ground that on a grievance petition / letter that has been received from one Bijay Kumar Kanungo, the opposite party no.5 that the illegal

transaction having been effected earlier of the said urban ceiling surplus land, the opposite party no.3 has directed, so also restrained to record the land immediately in the Government khata, so also the District Sub-registrar to allow illegal transaction of the said land through opposite party no.4 vide Annexure-4 series. Hence, the writ petition with the prayer stated above.

5. Counter affidavit has been filed by the opposite party nos.2 and 3 indicating therein that the aforesaid land was a ceiling surplus land and, accordingly, a draft statement was prepared. No appeal was preferred against the same, as such the same reached finality. The land schedule and map were communicated to the District Sub-Registrar, Cuttack vide letter No.1086 dated 31.05.2002 with instruction not to allow any transfer of land and properties under any circumstances except with the permission of the Government in specific cases vide Annexure-A/3. The Tahasildar was also intimated vide Annexure-A/3 making demarcation and taking possession of the same. The Tahasildar, however, stated that the said land was in possession of the WAKF Board and, as such, possession of the same could not be taken over, but compensation was not received by the petitioner in spite of the notice. Hence, the possession was not taken over, was denied. So also, their continuous possession has also been denied in their counter affidavit. But, in OJC No.15417 of 2001 direction was passed to the Government in Housing & Urban Development

Department to consider the exemption, but no compensation has yet been received. Therefore, the order has reached its finality, is without any substance. Despite the same, when the writ petitioner had transferred portion of the land which was registered and mutation was also effected, the aforesaid direction was given. The recording of the land was the inaction of the Settlement Authorities and, as such, once the land has been vested with the Government, the petitioners cannot take advantage of the same. The CID, Crime Branch, Odisha has also enquired into the matter.

6. However, in the rejoinder affidavit filed, the petitioners have refuted the possession of the so-called ceiling surplus land was taken over, so also the fact that the petitioners did not turn up to receive the compensation in view of the fact that in Annexure-2 the Tahasildar had intimated that possession was never taken over. In such premises, instruction received by the Collector under Annexure-4 series on a complaint of third party, the Collector could not have directed the opposite party no.3 to give instruction in Annexure-4 series to the statutory authority not to exercise his jurisdiction to the District Sub-Registrar, more particularly when the land was not vested with the Government under the Urban Land Ceiling & Regulation Act and neither possession was delivered nor compensation was given.

7. Opposite party no.6 – Chitaranjan Swain in his counter affidavit denied the writ petition to have any merit, inasmuch as the contempt petition for non-compliance of the direction in OJC No.15417 of 2001, vide CONTC No.1 of 2004 was disposed of being dismissed as it has no merit. Therefore, the land being urban ceiling surplus and vested with the Government and presently the land has been possessed by the Wakf Board and possession of the Wakf Board having been declared in a suit and the report of the Tahasildar that under what circumstances the possession was not taken over, inasmuch as the same was not possessed by the predecessor-in-interest of the present petitioners and thereafter by the Wakf Board which was intimated to the Settlement Officer, this writ petition is devoid of merit.

8. During course of hearing, learned senior counsel appearing for the petitioners would submit that in view of the decision rendered in view of the decision rendered by this Court in the case of ***Fakir Charan Singh (since dead) represented by his Legal Heirs vrs. State of Orissa and others***, reported in 2013(I) OLR 125, notwithstanding the order passed in OJC No.15417 of 2001, the land cannot be held to be an urban ceiling surplus land and vested with the Government. Furthermore, since the Sub-registrar has been vested with the power under Section 22-A of the Registration Act which he has to exercise in appropriate cases, the Collector could not have guided him or asked him or directed him to act in a particular

manner in respect of a particular piece of land. Therefore, Annexure-4 series is laible to be quashed and the opposite party no.4 be directed to register the documents presented by the petitioners.

9. Learned counsel appearing for the State though does not dispute that out of part of the said plot having been registered and it being a Government land, the Collector has jurisdiction to direct the Sub-Registrar not to register such land. Therefore, the letters issued under Annexure-4 series cannot be found fault with.

10. Learned counsel for the opposite party no.6 also echoes the submission of the learned counsel for the State.

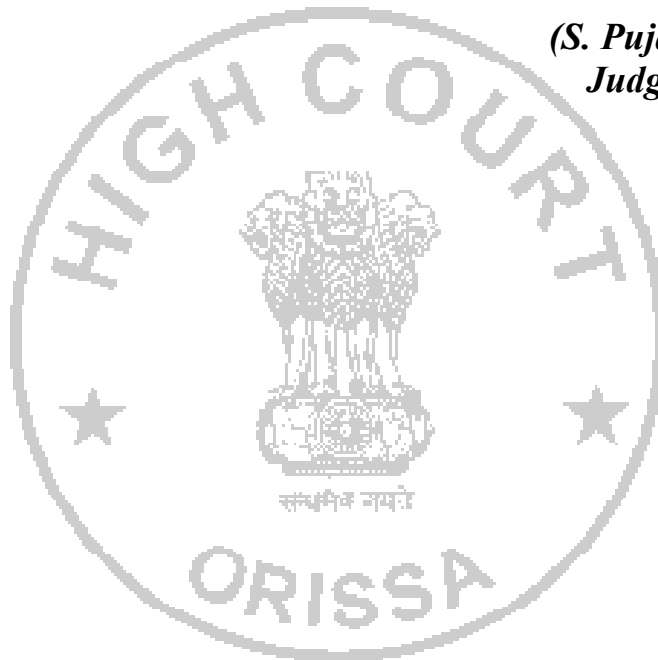
11. On hearing the learned counsel for the parties and going through the materials on record, this Court is of the view that the Collector could not have passed an executive instruction and directed the Sub-registrar not to register a particular piece of land in exercise his power under Section 22-A of the Registration Act.

12. Therefore, this Court dispose of the writ petition with a direction to the Sub-registrar to make an independent enquiry on the status of the land in the light of the decision rendered as aforesaid and exercise his statutory power for registration of the sale deed without being influenced by the letter at Annexure-4 series. However, if it is otherwise opined that Section 22-A of

the Registration Act (Orissa Amendment) is a bar for registration of the sale deed of the petitioners on such enquiry, return the same with a refusal memo and also if the petitioners demand the reasons of refusal, provide the reasons thereof as mandated in Section 73(2) of the Registration Act.

13. Urgent certified copy of this order be granted on proper application.

DA/MRS



(S. Pujahari)
Judge