

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5558 of 2021

Budhadev Sahu.

....

Petitioner

-versus-

State of Odisha & others.

....

Opposite parties

CORAM:

THE JUSTICE S.PUJAHARI

ORDER

05.05.2022

Order
No.

06.

1. This matter is taken up through Hybrid mode.
2. Heard the learned counsel for the petitioner and the learned counsel for the State.
3. The petitioner in this writ petition challenges the order dated 06.01.2021 passed by the A.D.M.-cum-District Registrar, Sambalpur, opposite party no.3 in Misc. (Registration) Appeal Case No.06 of 2019 confirming the order dated 03.12.2019 passed by the Sub-Registrar, Sambalpur, Opposite Party No.2 under Annexure-3 refusing to register the sale deed.
4. As it appears, the petitioner presented a sale deed for its registration to sell his 'Gharabari' land located within Sambalpur Municipal area. However, taking note of the fact that the executant belongs to scheduled caste and permission under Section 22 of the OLR Act is a sine-qua-non for

registration of the land in question, the Sub-Registrar, Sambalpur, opposite party no.2 refused to accept the sale deed for its registration and being aggrieved by the said order of refusal, an appeal being carried on before the A.D.M.-cum-District Registrar, Sambalpur was also rejected. Hence, this writ petition.

5. It is not in dispute that the aforesaid land is a homestead land. This Court in the case of *Mahurilal Agarwalla vrs. Dusasan Sahu and others*, reported in 1977 Vol.XLIII CLT 681, has held that where the disputed property is a house situated within the town of Talcher and would not come within the definition of “land” unless it is established that the same is “homestead ordinarily used as a house site, ancillary or incidental to agriculture”, the OLR Act, 1960 is not applicable. Therefore, the Authority could not have refused the same on the ground that the land belonging to scheduled caste person as there was no permission under Section 22 of the OLR Act the same is not registerable in absence of any provision is, therefore, contrary to the law laid down.

6. Hence, this Court allows this writ petition, set-aside both the orders passed by the opposite party nos.2 and 3 and direct the Sub-Registrar, Sambalpur, opposite party no.2 to accept the sale deed of the petitioner and examine the matter afresh on going through the document produced or such other enquiry as it deem just and proper and if it finds that the

homestead land is not ancillary or incidental to agriculture of the executants, then without insisting for permission under Section 22 of the OLR Act for registration, allow registration of the transfer land subject to compliance of other conditions.

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

(S. Pujahari)
Judge

MRS

