

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.16356 of 2007

Shri Rabi Narayan Rout and another* *Petitioners

-versus-

***Bhubaneswar Development Authority* *Opposite Parties*
*and others***

CORAM: JUSTICE S. PUJAHARI

ORDER

26.04.2022

Order

No.

03.

1. This matter is taken up through hybrid mode.
2. This writ petition has been filed by the Petitioners with a prayer to quash the deed of cancellation of the General Power of Attorney No.390/93 dated 16th June, 2007 under Annexure-6 and the sale deed dated 3rd November, 2007 under Annexure-7 and to hold and declare that the registered General Power of Attorney executed by Opposite Party No.3 in favour of the Petitioner No.2 under Annexure-3 is valid and binding between the parties in respect of the House No.MIG-1, G-9/15, Phase-1, Chandrasekharapur, Bhubaneswar and in alternative direct the Opposite Parties to execute and register the sale deed in respect of the said house in favour of Petitioner No.2 as per the willingness of the Power of Attorney Holder-Petitioner No.1.

3. Heard the learned counsel for the Petitioners. No one appears on behalf of the Opposite Parties.

4. This Petitioners has come to this Court seeking a direction to the Opposite Party No.3 to execute a sale deed in respect of the House No.MIG-1, G-9/15, Phase-1, Chandrasekharpur, Bhubaneswar and also B.D.A. allotment the same in favour of the Petitioners.

5. It is the case of the Petitioners that Opposite Party No.3 was allotted the aforesaid house by B.D.A. As he defaulted in payment of the installment, he entered an agreement with Petitioner No.2 to sell the house to her. Consequently, he also executed a registered Power of Attorney in favour of the Petitioner No.1. Pursuant to the said agreement, the Petitioners No.1 and 2 went on paying the amount due to the B.D.A. They have also cleared the dues, but in the meanwhile, the Opposite Party No.3 cancelled the Power of Attorney, which was stated unilaterally and made an effort to transfer the said house to another. Hence, they have filed this writ petition challenging the same.

6. Status quo order was passed by this Court in this writ petition and it is stated that such order of status quo is continuing till now.

7. Learned counsel for the Petitioners in the aforesaid premises submits to allow the prayer as sought for in this writ petition.

8. However, it is not disputed that B.D.A. was not a party in such agreement entered between the Opposite Party No.3- allottee and the Petitioner No.2. The dispute between the Opposite Party No.3 and the Petitioner No.2 is purely contractual one.

9. Without expressing any opinion whether unilateral cancellation of Power of Attorney was just and proper or not and whether the agreement is executable or not, this Court is of the view that no writ lies against the aforesaid dispute, even if property belongs to the B.D.A., moreso when there was no privity of contract between the B.D.A. and the Petitioners.

10. In such premises, the writ petition stands dismissed.

11. However, liberty is given to the Petitioners to ventilate their grievance before the appropriate forum with regard to such contractual dispute and if in the meanwhile, the same is raised, the Petitioners may invoke the clause of execution of the Limitation Act, as they are bonafidely prosecuting here in this writ petition for 18 years and in that event, the court concerned shall taking into all the facts and circumstances and also the provision in this regard decide the matter of the Petitioners, if so filed.

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

(S. Pujahari)
Judge

DA