

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.7580 of 2012

Asit Kumar Das and others ***Petitioners***

Mr. Nirmal Kishore Rath, Advocate

-versus-

State of Odisha and others ***Opp. Parties***

Mr.Swayambhu Mishra,

Additional Standing Counsel

(For Opposite Party Nos. 1 and 2)

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

16.03.2022

Order No.

10. 1. This matter is taken up through Hybrid mode.
2. Petitioners in this writ petition seek to assail the order dated 28th April, 2006 (Annexure-2) passed in Consolidation Revision Case No.381 of 1999, wherein the Commissioner, Consolidation, Odisha, Bhubaneswar dismissed the Revision filed by the Petitioners under Section 37 (1) of the Odisha Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 (for short, 'the Act').
3. Learned counsel for the Petitioners submits that admittedly, father of the Petitioners was recorded as the owner in respect of area Ac.0.07 decimal of land in mouza Orei under Gop PS in the district of Puri vide Sabik Khata No.229, Plot No.827 area Ac.0.03 decimal, Plot No.828 area Ac.0.02 decimal and Plot No.829 area Ac.0.02 decimal corresponding to Hal Khata No.294, Hal Plot No.618 area Ac.0.03 decimal and Plot No.619 area Ac.0.04 decimal (for short, 'the case land').

By virtue of registered gift deed he gifted the case land in favour of Managing Committee of Kalyaniya M.E. School, Mahalpada (for short 'the institution') for construction of the School with certain conditions. Out of five, one of the conditions was that if the purpose for which the case land gifted is not fulfilled or the approval in favour of the institution is withdrawn, then the land will revert back to the donor, i.e., the Petitioners' father. Admittedly, the institution is not functioning at present. In the Consolidation operation, the case land was recorded in the name of the institution. Hence, the father of the Petitioners filed a Revision under Section 37(1) of the Act to record the land in his name, as the conditions were not fulfilled. The Commissioner, in the impugned order under Annexure-2 held that once the property is gifted with or without any condition, the same cannot be revoked unless a declaration is made to that effect by a competent Civil Court and dismissed the revision petition.

3.1 Learned counsel for the Petitioners submits that since the conditions spelt out in the registered gift deed under Annexure-1 are not fulfilled and the institution is defunct at present, the gift deed will stand automatically revoked and the property is to be reverted back to the donor. As such, the Commissioner committed an error in dismissing the revision without directing to record the land in favour of the Petitioners.

4. Mr. Mishra, learned ASC refuting the above contentions submits that the allegation that the conditions are not fulfilled requires factual adjudication recording evidence of the parties. Thus, the Commissioner, Consolidation has committed no error

in holding that the gift deed can only be revoked by a competent Civil Court.

5. Taking into consideration the rival submissions of learned counsel for the parties and on perusal of record, it appears that the Petitioners' father had filed the revision for recording of the case land in his name by revoking the registered gift deed made in favour of the institution. It is also his contention that the institution is not functioning at present. All these allegations require factual adjudication. Neither the Management of the institution nor the institution itself has been impleaded as party either to the revision petition or to this writ petition. Hence, it is very difficult to ascertain the factual position, more particularly with regard to satisfaction of the conditions of the registered gift deed under Annexure-1. In that view of the matter, this Court is not in a position to give a definite opinion on the contentions raised by learned counsel for the Petitioners.

6. This Court, therefore, without interfering with the impugned order under Annexure-2, disposes of the writ petition with an observation that the Petitioners may work out their remedy in competent Court of law, if they are so advised.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge