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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.25049 of 2013

In the matter of an application under Articles 226 & 227 of the Constitution of India.

Debajani Dalei

.... **Petitioner**

Versus

State of Odisha and another

....

Opposite Parties

For Petitioner ... Mr. B.H.Mohanty, Senior Advocate,
Mr.S.Mishra, Advocate

For Opposite Parties ... Mr.S.Ghose, AGA
Mr. U.K.Sahoo, ASC

J U D G M E N T

PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 25.08.2022

Biswanath Rath, J.

The Writ Petition involves a challenge to the order dated 26.08.2013 passed by the Additional Settlement Officer, Puri in exercise of Sou Motu power involving Sou Motu Badar Case No. 212 of 2013 involving an exercise of power under Section 22(1) of the Odisha Survey & Settlement Act, 1958 vide Annexure-6.

2. Background involving the case is one Khetrabasi Jalli of village Satapada in the district of Puri since filed an application for lease of Ac.0.120 dec of Khas Mahal land out of Plot No.1070 in Khas Mahal Block No.11 of Puri Town. This lease case was registered as Lease Case No.88 of 1963-64. On the application being sent by the Tahasildar to the concerned Revenue Officer with necessary inputs in a subsequent development on 12.05.1967, the Revenue Divisional Commissioner was pleased to sanction the lease of an area of Ac.0.060 dec. only out of Plot No.1070 of Balukhand Khas Mahal on payment of usual salami and rent. It appears on 19.03.1969, a lease deed was executed by the Governor of Odisha in favour of the Applicant Khetrabasi Jalli. The lease deed appears to have been registered as lease deed bearing registration No.2796 dated 19.03.1969. Petitioner got a copy of lease deed after it is duly registered by the Collector. Consequence upon execution of lease deed, there was delivery of possession of the lease hold land to the lessee on 26.06.1969. It appears after the death of the lessee Khetrabasi, his successors transferred the lands to one Debajani Dalei (daughter-in-law) vide Registered Sale Deed No.3353 dated 13.07.2001. Since the settlement operation had already commenced and proceeded to a considerable extent, Debajani, the purchaser moved the Settlement Commissioner in R.P. Case No.7451 of 2001 under the provision of Section 32 of the Odisha Survey and Settlement Act. The matter was sent to the Settlement Officer to treat the same as an Appel under Section 22 of the Act. In a further development the Appeal was allowed vide Annexure-3 on 14.03.2003.

3. While the matter stood thus it appears, a Sou Motu Appeal under the provision of Section 22(2) of the Act was initiated and disposed of against the Petitioner vide Annexure-6 resulting filing of the Writ Petition.

4. Mr.Mishra, learned counsel for the Petitioner advancing his submission taking this Court to the above background bringing to the notice of the provision at Section 22(2)(a) together with 2(b) of the Act contended once there is entertainment of an Appeal under Section 22 of the Act and the Appeal decided in favour of the Petitioner, a party if aggrieved by such Appeal order particularly the order at Annexure-3 could have challenged the same in higher forum. It is in the above circumstances Mr.Mishra, learned counsel for the Petitioner while resisting even initiation of the Sou Motu Appeal proceeding pending also challenging the order therein and requests this Court for interfering in the impugned order and setting aside the same for not being maintainable.

5. Learned counsel appearing for the State in their objection to the entertainability of the Writ Petition and their submission in support of the impugned order vide Annexure-6, taking this Court to the conditions in the lease deed in between the State and the lease holder particularly taking this Court to the condition at paragraph-10 therein contended for there is restriction in further transfer of the land by the lessee, the registered sale deed became void.

It is taking this Court to the ground raised by the Petitioner in challenging the impugned order, learned State Counsel urged that it is only in the above circumstance there was requirement for initiating the Sou Motu Appeal. The Appellate Authority in the

consideration of Sou Motu Appeal and the result in the Sou Motu Appeal moves through paragraph-10 of the lease deed. Learned State Counsel thus contended that there is no illegality in the impugned order requiring to be interfered with.

6. Considering the rival contentions of the Parties, this Court finds moot question to be decided herein, once there is exercise of Appeal power in the process of decision through Annexure-3, undisputedly under Section 22 of the Act, if there is possibility of permission for initiation of Sou Motu Appeal in exercise of power under Section 22(2)(a) of the Act valid?

7. Keeping in view the background indicated hereinabove, this Court finds, there is no dispute that the order vide Annexure-3 already involved a proceeding under Section 22 of the Act. This Court here takes into account the provision at Section 22 as a whole which reads as follows:-

“22. Sanction of settled rent and modification of orders passed on objection – (1) When all such objections have been disposed of, the Assistant Settlement Officer shall submit the Settlement Rent Roll to the Settlement Officer with a full statement of the grounds of his proposals and a summary of the objections, if any, received by him.

(2) The Settlement Officer shall-

- (a) of his own motion; or
- (b) on application without thirty days from the order passed on an objection preferred under Sub-section (1) of Section 21, have power to modify any such order.

(3) The Settlement Officer may sanction the said roll with or without amendment or any return the same for revision by the Assistant Settlement Officer.

(4) No modification or amendment or revision shall be made under Sub-section 920 or, as the case may be, Sub-section (3) until reasonable opportunity has been

given to the parties concerned to appear and be heard in the matter.”

8. Looking to the proceeding in Annexure-6, this Court finds, this proceeding appears to be under Section 22(a) of the Act. For the opinion of this Court and reading the provision at Section 22, the Appellate Authority has two powers, either undertaking such exercise on his own motion under the provision of Section 22(2)(a) or entering into an Appeal exercising on an application being filed within thirty days against the order passed on an objection preferred under sub-Section (1) of 21 of the Act. For there is no dispute that the proceeding under Annexure-3 already involved an exercise of power under Section 22(2)(a), this Court finds, there was no occasion in again having an exercise under Section 22 of the Act.

It is at this stage of the matter looking to the undisputed factual background, the Appeal instituted earlier already involved an exercise of power under Section 22(2)(a) of the Act and a Sou Motu Appeal was since not involved an order passed in 21(1) of the Act, there was no question of initiating a Sou Motu Appeal proceeding.

9. In the process, this Court finds proceeding vide Annexure-6 is bad in law, as an outcome the impugned order is also not sustainable since involved an illegal proceeding, this Court accordingly sets aside the impugned order at Annexure-6. It is at this stage of the matter, this Court cannot lose sight of the restriction in the lease deed being raised by the learned State Counsel reading through the paragraph-10 of the lease deed while allowing the Writ.

This Court observes in the event the State is aggrieved by any transaction involving such sale deed, nothing prevents the State Authority to act in accordance with law keeping in view the restriction in paragraph-10 of Annexure-1.

10. The Writ Petition succeeds but however with the above observations. No costs in the circumstance.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 25th August, 2022/Swarna, Junior Stenographer*

