

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.9101 of 2022

Shyam Charan Hansdah ***Petitioner***

-versus-

State of Odisha and others ***Opposite Parties***

CORAM: JUSTICE S. PUJAHARI

ORDER

27.04.2022

Order

No.

02.

1. This matter is taken up through hybrid mode.
2. Heard the learned counsel for the Petitioner and the learned counsel for the State-Opposite Parties.
3. The grievance of the Petitioner in this case is that though he has necessary permission as required under Regulation 2 of 1956 to dispose of the land, but the registering authority instead of diarise the sale deed refused to register the same without any justifiable reason on misinterpretation the letter No.30206 dated 30th October, 2015 of the Joint Secretary, Revenue and Disaster Management Department, Government of Odisha addressed to the Collector, Mayurbhanj and stated that unless the property partitioned and after such partition, the rest of the land of each of the vendee remain five acres or more, the same is not registable as the documents in support of the same was not produced.

4. The case of the Petitioner is that he is one of the vendors of a property for which permission has been given to him to dispose of under Regulation 2 of 1956 vide order dated 17th October, 2015 in Regulation 1 Case No.14 of 2015 by the competent authority to dispose of Ac.0.800 decimals of land. After obtaining such permission, they have already disposed of part of the same belonging to their community on receipt of the valuable consideration which has been registered by the Opposite Party No.5-The Sub-Registrar, Bamanghaty. However, when they wanted to dispose of the remaining land of Ac.0.180 decimals to a person belonging to non-scheduled tribe, even if they have permission to dispose of the land from the competent authority and went to the office of the Opposite Party No.5 and presented sale deed executed, but the Opposite Party No.5 orally refuse to accept the same citing clarification of the letter No.30206 dated 30th October, 2015 issued by the Joint Secretary, Revenue and Disaster Management, Government of Odisha. In spite of the request of the Petitioner to admit the sale deed for its registration as the permission has already in their favour much prior to the issuance of said clarification, but the Opposite Party No.5 expressed his inability in the matter. Then the Petitioner through his lawyer presented the draft sale deed with other requisite documents for registration before Opposite Party No.5 on 17th August, 2019. The Opposite Party No.5 on receipt of the draft sale deed along with requisite documents vide letter No.594 dated 27th August, 2019 requested advocate of the Petitioner to produce the R.O.R.

of the land, legal heir certificate of recorded tenant and Aadhaar Cards of all the executants in order to take a decision in the matter. The Petitioner after receipt of the letter, furnished the required documents, but the Opposite Party No.5 on receipt of the letter dated 20th February, 2020 vide letter No.183 dated 7th March, 2020 expressed its inability to register the document to effect the sale and intimate the said refusal with the clarification of the Government of Odisha in the letter cited supra which was intimated to the Collector, Mayurbhanj indicated the prohibition under Regulation 2 of 1956 as amended in 2002.

5. According to the Petitioner, after death of his father and mother, who are the recorded tenant, they have possessed the entire land jointly. Therefore, in such premises, when permission has been granted by the concerned authority to the Petitioner to dispose of the land, the Opposite Party No.5 could not have refused to register the sale deed as the remaining land on execution of the sale deed are not offending the provisions in the regulation or the clarification inasmuch as the left out land is much more than the limit prescribed. Hence, he has filed this writ petition seeking a writ calling upon the Opposite Parties as to why the clarification Letter No.30206 dated 30th October, 2015 issued by the Opposite Party No.1 under Regulation (1) of 2002 in connection with registration of document belonging to Schedule Tribe community and consequent refusal Letter No.541 dated 7th September, 2021

issued by the Opposite Party No.5 under Annexure-9 series shall not be quashed as the same is without any authority of law and overreaching the language of statutory mandate as given under the statute and the Opposite Party No.5 be directed to register the sale deed.

6. Mr. Ramakanta Mohanty, learned Senior Counsel appearing for the Petitioner placed reliance on the decision of this Court rendered in W.P.(C) No.11786 of 2018, which is at Annexure-12 of the writ petition, submits that in the similar facts and circumstances, this Court had in the case of Real Estate (Regulation and Development) Act, 2016 and the circular issued by the Government following the Act, when Sub-Registrar refuse to accept the instrument tendered and examine the registerability of the same, passed an order that instrument for registration when presented before the concerned Sub-Registrar, the concerned Sub-Registrar shall do well in taking a decision on the registerability or non-registerability of the instrument and thereafter will proceed for registration of the instrument. In the event, the instrument is registerable, in the event, the Act has no application in the case. In this case, therefore, there being misinterpretation of the circular and on a wrong premises in spite of the permission from the competent authority, Opposite Party No.5-The Sub-Registrar, Bamanghaty having refused to register the sale deed, this Court should direct the Opposite Party No.5-The Sub-Registrar, Bamanghaty to accept the sale deed and register the same.

7. However, learned counsel for the State defended the order of the Opposite Party No.5-Sub-Registrar, Bamanghaty in refusing to register the same.

8. Needless to say that in this case, as it appears that the Opposite Party No.5-Sub-Registrar, Bamanghaty has already refused to register of the sale deed and given the refusal memo and also the reasons of the refusal. Therefore, the impugned decision of the Opposite Party No.5-The Sub-Registrar, Bamanghaty being appealable one, the decision cited by the Petitioner has no application to this case.

9. This Court, therefore, dispose of this writ petition giving liberty to the Petitioner to file an appeal by 20th June, 2022, as intervening period of the limitation having been suspended due to spread of Covid-19 pandemic by the Apex Court, before the appellate authority challenging such decision of the Opposite Party No.5-Sub-Registrar, Bamanghaty. Needless to say that when such an appeal is filed, the appellate authority will examine the same giving an opportunity of hearing to the Petitioner and his counsel and take note of the fact that permission has already been given in this case, so also applicability of the executive instruction to the facts and situation vis-à-vis the intendment of statutory period, pass necessary order not later than two months of presentation of the appeal.

10. Urgent certified copy of this order be given on proper application.

(S. Pujahari)
Judge

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