

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.9129 OF 2022

Dhiren Kumar Pani and others* *Petitioners

Mr. Subhransu Bhusan Mohanty,
Advocate

-versus-

State of Odisha and others* *Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
20.06.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. The grievance of the Petitioners in this writ petition is with regard to inaction of Sub-Registrar, Dhamnagar-Opposite Party No.3 in making an enquiry as required under Section 35 of the Registration Act (for short 'the Act') read with Rules 63 and 64 of the Orissa Registration Rules, 1988 (for short 'the Rules').
3. Mr. Mohanty, learned counsel for the Petitioners submits that father of the Petitioners, namely, Sri Braja Sundar Pani (Opposite Party No.4), is an old man of 97 years. He is not in a sound state of mind. Some persons of the locality taking advantage of such situation are persuading him to execute registered sale deed(s) in respect of the land recorded in his name under Khata Nos.693/664 and 693/648 situated in mouza Janamandua under Bhandaripokhari Tahasil in the district of Bhadrak. Although the Sub-Registrar, Dhamnagar is required to make an enquiry under Section 35 of the Act read with Rules 63 and 64 of the Rules before

registration of a document in respect of the aforesaid properties, but he is not accepting the objection raised by the Petitioners to that effect.

4. Mr. Mohanty, learned counsel for the Petitioners relies upon the order dated 14th March, 2022 passed in W.P.(C) No. 5783 of 2022, wherein this Court made clear that if any deed executed by the father of the Petitioners is tendered for registration, the concerned Sub-Registrar shall make an enquiry about the power of understanding of the executant and that executant with the understanding of the consequence has executed the deed and only on being satisfied of the same, allow such registration. The said order was passed in respect of the properties of Opposite Party No.4 situated under the local limits of Sub-Registrar of Bhadrak. He, therefore, submits that a similar direction may be made in respect of the aforesaid properties, which are situated within the local limits of Sub-Registrar, Dhamnagar-Opposite Party No.3.

5. Mr. Mishra, learned Additional Government Advocate submits that this writ petition is premature and the Petitioners have no cause of action to file such writ petition. It is his submission that there is no allegation to the effect that the Opposite Party No.4 has executed or is going to execute sale deed in respect of the aforesaid properties. He further submits that the Sub-Registrar, Dhamnagar is obliged under law to follow due procedure before registration of the deed tendered before him. Thus, this writ petition is misconceived and is liable to be set aside.

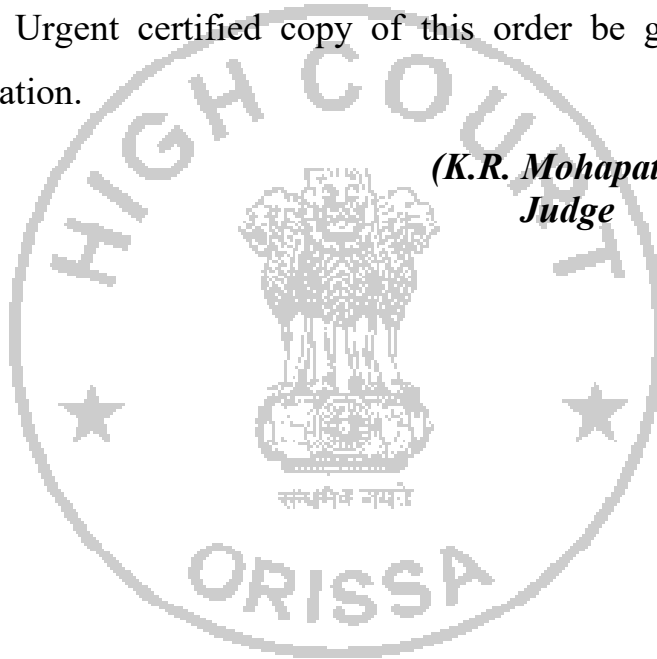
6. Taking into consideration the submissions made by learned counsel for the parties and the requirement under Section 35 of the Act read with Rules 63 and 64 of the Rules, this Court is of the

considered opinion that the concerned Sub-Registrar is obliged under law to make an enquiry as stated above before registration of the deed, if any, executed by Opposite Party No.4, if an application/objection is filed to that effect. Mr. Mohanty, learned counsel for the Petitioners undertakes to produce the certified copy of this order before the Sub-Registrar, Dhamnagar to do the needful in accordance with law.

7. With the aforesaid observation, this writ petition is disposed of.

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

(K.R. Mohapatra)
Judge



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