

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12147 of 2017

***Sankar Samal and
others***

....

Petitioners

*Mr. Ramakanta Mohanty,
Senior Advocate,
Ms. Pratyusha Naidu,
Advocate*

-versus-

***State of Orissa and
others***

....

Opposite Parties

*Mr. S.S. Pradhan, A.S.C.
(For State-Opposite Parties
No.1 to 5.*

CORAM: JUSTICE S. PUJAHARI

ORDER

30.08.2022

**Order
No.**

09.

1. This writ petition has been filed by the Petitioners challenging the order dated 10th May, 2017 passed by the learned District Registrar, Jagatsinghpur in Appeal No.2 of 2016 under Annexues-6 and order dated 10th May, 2017 passed by the learned District Registrar, Jagatsinghpur in Appeal No.1 of 2016 under Annexure-7 wherein the learned District Registrar, Jagatsinghpur refusing to register the Sale Deed bearing I.D. No.721600381 dated 5th April, 2016 appertaining to Plot No.1388, Khata No.330 of Mouza-

Deuligrameswar having an area of Ac.0.09 decimals, presented for registration before the Opposite Party No.3-District Sub-Registrar, Jagatsinghpur, on the ground that the same is illegal and arbitrary, with a prayer to quash the same and direct the Opposite Party No.3-District Sub-Registrar, Jagatsinghpur to register the said transaction pursuant to the sale deed executed.

2. I have already heard the learned counsel for the parties.

3. The case of the Petitioner is that the land appertaining to Sabik Plot No.1215 under Sabik Khata No.357 of Mouza-Deuligrameswar, District-Jagatsinghpur measuring an area of Ac.0.14 decimals is Gharabai Kisam belong to one Abhina Samal, the ancestor of the Petitioners. After demise of the said recorded tenant, his sons, namely, Hadibandhu Samal, Kapila Samal and Kasi Samal inherited the said property as successors, as revealed from the R.O.R. of the year 1930, and possessed the land peacefully in

exercise of their right, title over the same. On death of the sons of Abhina Samal, the recorded tenant, the present Petitioners, who are legal heirs, succeeded to the said property and possessed the same, and also got the same recorded in their name in the revenue records vide the R.O.R. issued in Mutation Case No.263 of 2007. Consequent thereupon, the Petitioners continued possession over the said land, which presently appertains to the Plot No.1388 of Mouza-Deuligrameswar in the district of Jagatsinghpur, with payment of rent. However, the Petitioners, to meet their legal necessity decided to dispose of the said plot in favour of the proforma Opposite Party and, as such, they made a prayer before the District Sub-Registrar, Jagatsinghpur for issuance of non-encumbrance certificate in respect of the said plot, and accordingly obtained the same, and when the sale deed on being scribed and was presented for registration with deposit of the requisite fees, the District Veterinary Officer, Jagatsinghpur made an objection to the same on the ground that the land appertaining to Plot No.1388 had

been gifted by the ancestors of the Petitioners to the Veterinary Department through an unregistered Gift Deed and, as such, the land belongs to the Government. On such objection, the Opposite Party No.3-District Sub-Registrar, Jagatsinghpur, refused to register the sale deed. Being aggrieved by such action, the Petitioners preferred W.P.(C) No.8865 of 2016 before this Court and this Court vide order dated 19th May, 2016 directed the Opposite Party No.3-District Sub-Registrar, Jagatsinghpur, to take a final decision on the application of registration of the sale deed presented by the Petitioners. It is alleged that the opposite Party No.3-District Sub-Registrar, Jagatsinghpur without appreciating the fact that the Petitioners are in possession of the said land, refused to register the sale deed citing the provision of Section 22-A(2) of the Registration (Odisha Amendment) Act, 2013, on the ground that the Petitioners are not in possession to the property. Being aggrieved by the said order, the Petitioners assailed the same before the Opposite Party No.4-District Registrar, Jagatsinghpur. As it appears,

the said appellate authority dismissed the appeal of the petitioners with the findings, inter-alia, that although the gift deed produced by the Chief District Veterinary Officer was not legible / visible, existence of such a deed being beyond any dispute, the same was relevant to support the claim of possessory right of the Veterinary Department over the land in dispute. With an observation that correction of the ROR in favour of the petitioners being ex-facie, the spot enquiry report submitted by the Tahasildar affirming possessory right of the Chief District Veterinary Officer had prevailing force. Referring to the provisions under Section 22-A(2) of the Registration (Orissa Amendment) Act, 2013, the appellate authority held that the transferers (petitioners) failed to satisfy the Registering Officer that they had possessory right over the transacted plot. Ultimately, the District Registrar (opposite party no.4) dismissed the appeal of the petitioners. Being aggrieved by the order aforesaid, the petitioners have approached this Court on the grounds, inter-alia, that refusal to register the sale deed in question is violative of the

Article 300-A of the Constitution of India, inasmuch as the same has the effect of depriving the owners in possession of the property of enjoying the same in the manner they liked. It is the further contention of the petitioners that there being no legal materials to show the land to have ever been gifted, the provision of Section 22-A(2) of the Registration (Orissa Amendment) Act, 2013 has no application in the present case.

4. Section 22-A(2) of the Registration (Orissa Amendment Act), 2013 speaks of production of R.O.R. for satisfaction of the authority that such transferor has right, title and interest over the property so transferred.

5. Here in this case, though R.O.R. in this case was there in the name of the present Petitioners, but the authority still refused to act upon the same, inasmuch as an objection was made to that they have no title in respect of the property under transaction.

6. Counter affidavit has been filed in this case with averments that the ancestors of the Petitioners had donated the aforesaid plot to the District Board,

Cuttack for the purpose of establishment of a Veterinary Dispensary, for the public purpose in the year 1936, followed by delivery of possession. Since then the dedicators-cum-donor lost their title and possession. The ancestors of the Petitioners, thereby transferred their title and possession since more than 80 years. Since no steps could be taken during the Hal Major Settlement operations by the then Veterinary Authority for recording of the land in favour of the State, the land-in-question stood recorded wrongly in the name of the donors. In spite of such recording, the same confers right, title on the donee. Admittedly, a Veterinary Dispensary which consisting of a two storied building has been established and the same is functioning since 1937. As such, it being a property of the Government and since Section 22-A by amendment of the Registration Act, 1908 by Odisha Act of 2014 dated 22nd February, 2014 prohibits transfer of the immovable property by way of sale, gift, mortgage, exchange or lease, the impugned order cannot be found fault with. Furthermore, when remedy is available in

the Civil Court, the Petitioners could not have come to challenge the impugned order in this writ petition. Hence, the writ petition filed seeking a direction to the Opposite Party No.3-District Sub-Registrar, Jagatsinghpur to register the said property pursuant to the sale deed executed, is misconceived and the writ petition, as such, is liable to be dismissed.

7. Learned counsel for the Petitioners would submit that no doubt, an alternative remedy is available to the Petitioner, but the same does not preclude this Court to exercise its jurisdiction under Article 226 of the Constitution of India, which is well settled in law. In this case, the R.O.R. is standing in the name of the present Petitioners. Since the land belongs to the Petitioners and there being nothing on record to show that the land was a Government land, neither Section 22-A nor Section 22-A(2) of the Registration (Orissa Amendment Act), 2013 comes into play in this case. Since the Petitioners have shown their R.O.R. indicating prima facie their right, title over the land and possession of the land is not a *sine qua non* for transfer

of the same, the authority could not have refused to register the sale deed, on a wrong premise, that the land belongs to Government and that there was no order from Court declining title of the Government. In such a premises, he submits that this Court should set aside the impugned order and direct the Opposite Party No.3-District Sub-Registrar, Jagatsinghpur to register the said property pursuant to the sale deed executed.

8. However, learned counsel for the State-Opposite Parties No.1 to 5 would submit that in this case, that there is serious dispute with regard to the title and possession of the land in question. Physical possession being a *sine qua non* for delivery of the land, but the dispute being that Veterinary Dispensary is located therein, this Court without interfering with the impugned order, should direct the Petitioners to ventilate their grievance, if any, before the appropriate Civil Court through appropriate proceeding challenging the order impugned.

9. As it appears, no doubt, the R.O.R. stands in the name of the present Petitioners, but the State-Opposite Parties take the stand that the land in question where Veterinary Dispensary is functioning since long belongs to Government, though the same could not be recorded in the name of Government. Therefore, this being a serious dispute with regard to title over the land in question and the Government having not been able to show title over the same where a Veterinary Dispensary is functioning, in view of Section 22-A(2) of the Registration (Orissa Amendment Act), 2013 prima facie it cannot be said that it is a Government land and, as such, transfer is prohibited. But, the aforesaid being a disputed question of fact regarding title of the land in question between the petitioner and the Government, the same cannot be effectively adjudicated in this writ petition. Furthermore, a statutory remedy is also available to him under Section 77 of the Registration Act by filing a suit before the Civil Court concerned seeking appropriate direction. Otherwise also, the petitioner having already availed of the alternative

statutory remedy by challenging the order of the District Sub-Registrar before the appellate authority, he can not thereafter in the midst without exhausting the statutory remedy available, that is to challenge such order before the Civil Court within time stipulated period as provided in Section 77 of the Registration Act, seeks to redress of his grievance invoking the writ jurisdiction against such order.

10. Hence, I am not inclined to entertain the prayer made in this writ petition for the aforesaid reasons, and dispose of the same giving liberty to the Petitioners to approach the appropriate Civil Court not later than thirty days hence, challenging the impugned order of the Registrar. In that event, the Civil Court shall entertain and dispose of the same in the manner known to law without taking note of the limitation as it appears that within the period of limitation of filing the suit under Section 77 of the Registration Act, the petitioner had approached this Court bonafidely invoking the writ jurisdiction and pursuing the same, which this Court did not adjudicate on merit for the reasons stated

earlier and in such cases the clause of exclusion of time in calculating the limitation as provided in Section 14 of the Limitation Act comes into play.

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

(S. Pujahari)
Judge

DA/MRS

