

AFR **IN THE HIGH COURT OF ORISSA CUTTACK**

W.P.(C) No.12489 of 2022

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

Dr. Shashwati Mohapatra **Petitioner**

Versus

State of Odisha & Anr. **Opposite Parties**

For Petitioner ... Mr.R.Roy, Advocate

For Opposite Parties ... Mr. S.P.Panda, Additional
Government Advocate
Mr.D.Mohapatra, Advocate

J U D G M E N T

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PRESENT:

THE HONOURABLE JUSTICE BISWANATH RATH

Date of Hearing and Judgment: 12.10.2022

Biswanath Rath, J. Undisputed facts remains to be vide Annxure-2, possession involving the disputed land was handed over by the Development Authority in favour of one Choudhury Truptimayee Sahoo appearing to be the first allottee of Plot No.K-8-665 vide Annexure-2. In the meantime there appears there is application for transfer of this plot in

favour of the present Petitioner and vide Annexure-3 there is grant of permission. There is grant of permission of transfer of the above land to the original allottee in favour of the present Petitioner. Further undisputed fact remains to be on an application by the Petitioner for plan approval, there is already approval of plan vide Annexure-4 and further undisputedly there already exist a G+2 plot over the disputed property being constructed by the Petitioner with due permission of the competent authority.

2. The dispute arises here involving the Petitioner approaching the development authority entering into the registration of the lease deed involving the disputed land in favour of the Petitioner involving the first hand transfer vide Annexure-1, the same appears to be rejected vide Annexure-1 on the premises of impediment in view of observation in the Task Force Report at para 48.7 vide Annexure-9 available at page-100 of the brief. Mr.Roy, learned counsel for the Petitioner categorically submits, for the reference involving the Task Force Report, issue involved has no place to be considered in terms of the answer by Task Force to such reference. Thus a request is made for interfering in the impugned order at Annexure-1, setting aside the same and giving suitable direction.

3. Mr.Mohapatra, learned counsel appearing for the Development Authority while not disputing on the facts of first allotment then entering into permission for second party transfer, then involving an application for plan approval and then in non-grant of plan approval and even on existence of a G+2 storied building on the disputed plot further that there has been disposal of request of second party involved herein denying a request for entering in registration of lease agreement. However, taking this Court to the observation of the Task Force find place particularly at para-48.7 at pages-100 and 101 of the brief, Mr.Mohapatra, learned counsel appearing for the Development Authority contends, there is lawful rejection of the request of the Petitioner vide Annexure-1 and thus requiring no interference by this Court. Mr.Mohapatra, learned counsel appearing for the Development Authority however has no denial on the terms of reference aspect involving the Task Force Report and submits in any case, there cannot be avoiding of one Registration charge involving initial allotment and the stamp fee and registration charge for entering in direct registration of the lease deed with the Petitioner as the subsequent allottee.

4. Mr.Panda, learned Additional Government Advocate however while supporting the stands taken by Mr.Mohapatra, learned counsel submitted in passing the final order, there should not be loss of revenue.

Mr.Panda, learned Additional Government Advocate, however, did not dispute the terms of reference involving the Task Force Report and that there has been recommendation of Task Force at para-48 vide Annexure-9 not applying to the case at hand.

5. Keeping in view the contest between the parties and reading together with reason of rejection vide Annexure-1, this Court finds the basis of rejection of execution of lease deed appears to be some observations of the Task Force constituted by the Government of Orissa involving the Task Force Report dealing with third party transfer before execution of lease deed and observing execution of the lease deed in favour of the third party as irregular. This Court here finds, sole question required to be considered here is; if the recommendation of Task Force remains beyond the terms of reference? and in such event if the recommendation therein has any application to the case at hand.

6. Looking to the terms of reference at page-29 as relied on by all the parties, this Court finds the terms of reference involving the Task Force Report at Annexure-9 reads as follows:-

“2. The Terms of Reference of the Task Force were further specified by Order No.22188 dated 11.08.2014. The mandate as modified in this specified Terms of Reference became as follows:-

1. The scope of review by Task Force will cover the period from 01.01.1995 to 31.07.2014 in Bhubaneswar and Cuttack urban areas in respect of (a) all cases of allotment of land/house/flat out of

discretionary quota and (b) allotment of more than one unit of land/house/flat to members of the same family.

2. The Task Force should submit its findings and recommendations to Government within a period of four months. Simultaneously, the concerned agencies like BDA, CDA, OSHB and GA Department should take action on irregular allotments within this period.”

Reading the first part of terms of reference, the report required to be covering transaction in between 01.01.1995 to 31.07.2014 in Bhubaneswar and Cuttack urban areas in respect of (a) all cases of allotment of land/house/flat out of discretionary quota and (b) allotment of more than one unit of land/house/flat to members of the same family and as per terms of reference No.2, there is only time stipulation in giving the findings to the Task Force Report and the recommendation thereto. The case at hand neither involves allotment in discretionary quota nor involves multiple allotment. This Court in answering the question No.1 framed herein observes, issue involved here was not within the purview of reference, thus answered in favour of the Petitioner. Thus second question is bound to be answered in favour of the Petitioner and is answered accordingly.

7. From the background involving the case narrated hereinabove, this Court finds, the case of the Petitioner undisputedly not coming within the purview of the assignment of the Task Force. Considering the objection of Mr.Mohapatra, learned counsel appearing for the

Development Authority in reference to para-48.7 appearing at page-100, this Court clarifies, the recommendation therein shall be only in reference to discretionary allotment and further multiple allotment, if any, and in no case it shall include allotments outside above two disciplines. Observation, if any, since beyond the discretionary quota and/or multiple allotment are all beyond jurisdiction of the Task Force and have nothing to play in the area as it is already beyond the reference.

8. It is in the circumstance, this Court finds there has been wrong application of the Task Force Report to the case of the Petitioner and thus the impugned order at Annexure-1 must suffer which is hereby sets aside. This Court as a consequence directs the Development Authority to immediately proceed to register the lease deed with the Petitioner but however subject to following conditions.

9. Considering the further submission of the respective counsel on the question of revenue, in the event of direction of registration of lease between the parties, this Court here finds, there are some technical difficulties in entering into the registration of the lease deed, as because a lease property has already been entered into second transfer even otherwise called as third party transfer and undisputedly there is no registration of lease involving the first transfer in between the B.D.A and the original allottee.

10. Looking to the contingency required in entering into registration of lease deed, there is requirement of deposit of certain amount towards the registration fee with the Registering Authority, so far as first registration is concerned, since the first hand delivery no more requires registration taking into consideration that there is further transfer of same property to the present Petitioner, there requires direct registration with the present Petitioner, undisputedly the Registering Authority is entitled to stamp duty as well as registration fee which cannot be avoided.

11. In the circumstance, this Court here records the undertaking of Mr.Roy, learned counsel for the Petitioner undertaking to meet the fees requirements involving the first registration and also the stamp duty as well as registration fee involving second registration, both will be met by his client while entering into registration of the lease deed. This Court here records the statement of Mr.Mohapatra, learned counsel appearing for the Development Authority that there since already a transfer permission in favour of the present Petitioner, there is no difficulty in directly entering into registration of lease deed with the present Petitioner but subject to however Petitioner clears revenue aspects indicated hereinabove. This Court therefore finds there is no difficulty in getting into the registration of the lease deed in between the development

authority and the Petitioner which will be however subject to compliance of the undertaking given by the Petitioner.

12. Coming to the other issues involved herein as to what should be the stamp duty and registration fee involving the registration required herein, this Court makes it clear that since Petitioner has to pay stamp duty as per the Bench mark value applicable on the date of application of the Petitioner to the Development Authority for registration and admitted registration fee, the Development Authority may find-out the date of application as well as stamp duty application on such date within a period of fifteen days and get itself ready with the lease deed and communicate the Petitioner on her appropriate discharge. As a consequence, the registration of lease deed may also be done within a further period of fifteen days thereafter.

13. The Writ Petition succeeds but no order as to cost.

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BISWANATH RATH, J.

*Orissa High Court, Cuttack.
Dated the 12th day of October, 2022/Swarna, Junior Stenographer*