

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 15788 OF 2020

Murali Das

Petitioner

Mr. Bhaskar Chandra Panda,
Advocate

-versus-

State of Odisha and others

.... Opp. Parties

Mr. Suvashish Pattnaik,
Additional Government Advocate

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

**ORDER
12.07.2022**

Order No.

- 6.
1. This matter is taken up through hybrid mode.
 2. The Petitioner in this writ petition seeks to assail the order dated 16th June, 2020 (Annexure-4) passed by the Additional District Magistrate, Cuttack in Stamp Appeal Case No. 1 of 2020, whereby he confirmed the order dated 5th November, 2019 (Annexure-2) passed by the Sub-Registrar, Jagatpur refusing to register the sale deed presented by the Petitioner to sell the property in question.
 3. Mr. Panda, learned counsel for the Petitioner submits that both the Sub-Registrar, Jagatpur as well as Additional District Magistrate, Cuttack refused the prayer of the Petitioner on the ground that R.O.R. published in the name of the Petitioner is under challenge as the sabik recorded tenant in respect of the suit plot had already alienated the property and the purchasers therein could not mutate the land in their name in due time. As revision petition assailing the R.O.R. published in the name of the Petitioner is pending, transactions in respect of the said plot has

been blocked in the system. It is his submission that although assailing the publication of R.O.R. in the name of the Petitioner in the R.O.R., a revision petition under Section 15(b) of the Orissa Survey and Settlement Act, 1958 is pending, but that cannot be a ground to refuse the registration of the sale deed. Further, registration of the sale deed cannot be refused on the ground of restriction imposed under Section 22-A(2) of the Registration Act, 1972 (for short 'the Act'). In support of his contention, he relied upon the decision in the case of ***Dhabal Prasad Pradhan –v- State of Orissa and others*** in W.P.(C) No. 9997 of 2014, wherein it has been held as under:

“On a plain reading of Sub-section (2) of Section 22- A of the Act, it is found that nowhere the provision requires production of Record-of-Rights in respect of the land transferred in the name of vendor or transferor. It simply requires production of the Record of-Rights for satisfaction of the registering officer that such transferor has right, title and interest over the property so transferred. It is well settled that Record of-Rights neither creates nor extinguishes title. The contention advanced by the learned counsel for the petitioner that interpretation of the provision under Sub-section (2) of Section 22-A of the Act assigned on behalf of the opposite parties is contrary to such settled principle of law is not unfounded. Moreover, it is rightly contended that such a narrow interpretation to the provision would be contrary to the provision under Section 8 of the Transfer of Property Act with regard to transfer of all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof forthwith. Title of the land passes upon valid execution of sale deed. Constitutional right conferred under Article 300-A of the Constitution of India has also to be given a meaningful interpretation to include right to deal with one's own property. In such circumstances, narrow interpretation of the provisions under Sub-Section (2) of Section 22-A of the

Act by the opposite parties is unwarranted and not acceptable.

Accordingly, it is held that Sub-section(2) of Section 22-A of the Act does not require production by the transferor of Record-of-Rights in which land transferred is recorded in transferor's name. Any interpretation of the provision to the contrary is arbitrary, illegal and unconstitutional."

He, therefore, submits that the Sub-Registrar, Jagatpur as well as Additional District Magistrate, Cuttack could not have refused the registration of the sale deed in question.

4. Mr. Pattnaik, learned Additional Government Advocate submits that the Petitioner has a remedy under Section 77 of the Act by filing a suit within thirty days from the date of refusal of registration. Thus, this writ petition is not maintainable.

5. Taking into consideration the rival contentions of the parties and the ratio decided in the case of **Dhabal Prasad Pradhan** (supra), this Court is of the considered opinion that when a document is presented for registration, the Sub-Registrar has to make an enquiry under Section 34 of the Act read with Rule 63 of the Orissa Registration Rules and take a decision accordingly. In the instant case, the Sub-Registrar has apparently not made any inquiry under Section 34 of the Act. It is also not clear from the impugned order as to how Section 22-A(2) of the Act has any application to this case, more particularly, when the R.O.R. in respect of the case land, although challenged, has not yet been set aside. Further, there is nothing on record to show that any interim order prohibiting transaction in respect of the land in question has been passed. The same, of course, requires factual adjudication. Further, this Court very recently in W.P.(C) No.

25695 of 2021 (***Manash Kumar Pradhan –v- State of Odisha and others***) held as under:

“It appears, by the provision, Parliament gave option to person aggrieved by order of the Registrar, to file suit within thirty days after the making of refusal, in civil Court of original jurisdiction where the office, in which the document is sought to be registered is situate, for a decree directing the document to be registered in such office on presentation within thirty days after the passing of such decree. This option, if to be exercised by the person aggrieved, must be exercised within thirty days after the making of the order of refusal. It has to be seen as an option and as options go, they may or may not be exercised. The provision is more so an option because limitations for suits are provided by the Limitation Act, 1963. The Act of 1908 does not save applicability of the provision from operation of the Limitation Act, 1963. As such, the writ petition is maintainable.”

6. In view of the discussion made above as well as the case law cited, this Court finds that this writ petition is maintainable. Accordingly, the impugned order under Annexure-4 is set aside and the matter is remitted back to the Sub-Registrar, Jagatpur- Opposite Party No.3 to take a decision afresh in accordance with law keeping in mind the observation made as well as case law cited hereinabove, giving opportunity of hearing to the parties concerned.

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

(K.R. Mohapatra)
Judge

bks