

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.16719 OF 2022

Saroj Kumar Sahoo

.....

Petitioner

Mr. Rajiv Kumar Mahanta, Advocate

-versus-

State of Odisha and others

....

Opp. Parties

Mr. A.R. Dash,

Additional Government Advocate

CORAM:

JUSTICE K.R. MOHAPATRA

ORDER

29.07.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. There is an allegation against the Sub-Registrar, Keonjhar-opposite party No.3 to the effect that in the garb of application of the provision of Real Estate (Regulation and Development) Act, 2016 (For short, 'the Act, 2016') and the subsequent circular issued by the State Government following the above Act, the Sub-Registrar is refusing to receive the sale deed tendered by the Petitioner for registration. Learned counsel for the Petitioner drawing attention of this Court to the provisions of the Act, 2016 submitted that there is no application of the Act, 2016 to the case in hand. Further, the Petitioner also does not come within definition of either promoter or the real estate builder.
3. Mr. Dash, learned Additional Government Advocate, on the other hand, submitted that the Act, 2016 is enacted keeping in view the protection of the interest of the consumers and it cannot be stated that the Act, 2016 has no

application at all. Mr. Dash, learned Additional Government Advocate, however, admitted that the Sub-Registrar is duty bound to accept the instrument tendered and examine its registerability and he is not justified in refusing to accept the instrument so tendered.

4. Considering the rival contentions of the parties and after going through the pleadings in the writ petition, this Court is of the considered opinion that the District Sub-Registrar shall have to examine each case on its own merit with regard to registerability of the instrument/document tendered in accordance with the provisions of the Registration Act, 1908 and Rules framed thereunder. If he is of the opinion that the document/instrument so tendered cannot be registered, he shall pass an order in terms of Section 71 of the Registration Act, but he cannot refuse to accept the same.

5. A grievance is made that the instrument tendered by the Petitioner has been returned by the Sub-Registrar on the premises that his case comes within the purview of the Real Estate (Regulation and Development) Act, 2016. Looking to the statement of object and reasons involving the Act, 2016, this Court finds, this is an Act enacted to have a check on the real estate promoters/builders playing in the field of the real estate sector from exploiting the consumers in the matter of sale of land or apartment etc. to the extent beyond 500 Sq. meter and exceeding beyond eight storied. Further, looking to the definition at Section-2 ZG, ZN, ZK and the clarification issued under subsequent Circular by the Government of Odisha in the Revenue and Disaster Management Department,

particularly keeping in view the clarification at Clause 4 in the Notification dated 17.01.2018, this Court finds, the case at hand requires consideration by the District Sub-Registrar with regard to registerability of the sale deed/instrument.

6. Accordingly, it is directed that on tendering of the sale deed by the Petitioner intended to be registered along with copy of this order before the concerned Sub-Registrar, he shall do well to take a decision on the registerability of the instrument and if he is of the opinion that the document can be registered, he will proceed for registration of the instrument. In the decision making process, the Sub-Registrar shall take into account the observations stated hereinabove. The Sub-Registrar is duty bound to see whether the sale involved is a sale by an individual in favour of Real Estate Promoter or not and pass a reasoned order.

7. The writ petition stands disposed of with the above observation and direction.

Urgent certified copy of this order be granted on proper application

(K.R. Mohapatra)
Judge

bks