

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO.19117 OF 2022

Prabhat Kumar Senapati ***Petitioner***
Mr. Arun Kumar Mohapatra, Advocate
-versus-
State of Odisha and others ***Opp. Parties***

Mr. Swayambhu Mishra,
Additional Standing Counsel

CORAM:
JUSTICE K.R. MOHAPATRA

Order No.

ORDER
27.10.2022

1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition seeks for a direction for implementation of the Odisha Gazette No.246 dated 7th February, 2020 (Annexure-3) issued by Housing and Urban Development Department, i.e. the Odisha Development Authorities (Planning and Building Standards) Rules, 2020 and further prays for a direction to the Sub-Registrar, Jatni-Opposite Party No.4 not to register any sale deed in violation of the provisions of the Real Estate (Regulation and Development) Act, 2016 (for short 'RERA Act') and Odisha Real Estate (Regulation and Development) Rules, 2017 (for short 'ORERA Rules').
3. It is submitted by learned counsel for the Petitioner that the Sub-Registrar, Jatni is allowing the registration of sale deeds in violation of the provisions of RERA Act and ORERA Rules. By virtue of such registration, the lands around plot of the Petitioner are being sold for which the Petitioner is facing difficulty to come out his own land.

4. Counter affidavit has been filed stating that the Petitioner has represented before the authorities on 30th March, 2022 and 31st May, 2022 under Annexure-5 for consideration and to issue necessary orders regarding implementation of ORERA Rules and to follow the guidelines as per the Odisha Gazette Notification as at Annexure-3. Simultaneously, an F.I.R. is also lodged by the Petitioner on 21st May, 2022. Without waiting for any result, this writ petition has been filed.

5. It is also submitted by Mr. Mishra, learned Additional Standing Counsel that alleged registration of sale deed was made on 26th February, 2020 by the Sub-Registrar, Jatni, i.e. much prior to the purchase land of land by the Petitioner on 31st May, 2022. It is further contended in the counter affidavit that Plot No. 218 of mouza Kantilo as per the R.O.R. is an agricultural land, but no 'Chaka Nala' or 'Pani Nala' in and around the Plot is found from the village map as per the boundaries of Plots. Relevant paragraphs-7 and 8 of the counter affidavit are quoted hereunder:

"7. That in reply to para 6 of the Writ Petition, it is humbly submitted that the plot No.218 of Mz-Kantilo as per R.O.R. (Patta) and indication of plot in the village map under Annexure-4 of the Writ Petition, it is crystal clear that the said plot is agricultural land but no 'chakanala' and 'paninala' in around the plot has found from the village map as per boundaries of the plot is given below:

North- plot No. 217

South- plot No.219

East- plot No. 209

West- Border of Mz-Kuha

From the above boundaries is shown the plot No.218 has became barren land due to encroachment of

'chakanala' and 'paninala' as alleged it may not be correct.

8. *That in reply to para 7 of the Writ Petition it is humbly submitted that the petitioner has submitted a representation before the Govt. authorities on 30.03.2022 and 31.05.2022 (under Annexure-5 of the writ petition) regarding non-implementation of Odisha Real Estate Regulatory Authority Act, but without awaiting the action of Govt. authorities or to issue direction thereon, the petitioner has preferred to file a writ petition before the Hon'ble High Court on 27.07.2022 just after completion of few days from his representation.*

Further, it is mentioned here that the petitioner on 31.05.2022 has filed a petition before the opposite party No.4 (Sub-Registrar, Jatni) (Under Annexure-5 at page-32 of the writ petition) raising objection regarding abusing official power and registration of documents of sub-plots without approval of proper authority. It is not fact that the objection raised by the petitioner is correct. The registration of document is made on the basis of Registration Act and Rules and with regards of Guidelines and instructions issued by Govt. authorities. No deviation has been made by the opposite party No.4 regarding registration of documents"

6. A rejoinder affidavit has also been filed by the Petitioner denying the averments and allegations made in the counter affidavit.

7. In view of the disputed questions of fact, this Court is not inclined to delve into the merit of the allegations made by learned counsel for the Petitioner. Further, persons against whom allegation is made are not made parties to this writ petition. Since the Petitioner has made allegations with regard to violation of the provisions of RERA Act and ORERA Rules, he has an effective and efficacious remedy under the said statute.

8. Accordingly, this writ petition is disposed of with an observation that the Petitioner may avail his remedy in accordance with law.

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

bks

(K.R. Mohapatra)
Judge

