

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.28107 of 2020

Sitaram Roy.

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Petitioner

M/s. P.K. Rath, A. Behera, S.K. Behera,
P. Nayak, S. Das, S. Rath, Advocates

-versus-

State of Odisha & others.

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Opposite Parties

For O.P. No.1 – Addl. Govt. Advocate
For O.P. No.6 - M/s. D.P. Mohanty, R.K. Nayak, T.K.
Mohanty, P.K. Swain, M. Pal, Advocates.

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
19.01.2022**

**Order
No.**

07. **1.** This matter was directed to be listed on 11th of January, 2022 under the heading of “Delivery of Orders”. But, since this Court did not function on that date, this matter is listed today under the same heading.
- 2.** I have heard the learned counsel for the parties.

3. This writ petition under Article 226 and 227 of the Constitution of India has been filed by the petitioner seeking a writ of certiorari to quash the order dated 4.9.2020 passed by the opposite party no.5-Assistant Town Planner, Bhubaneswar Development Authority, vide Annexure-1.

4. As it appears from the order impugned, the Assistant Town Planner, BDA has revoked the permission granted in favour of the owner represented through his power of attorney holder, i.e., the petitioner for construction of G+2 storey residential building over Plot No.118 under drawing No.1161 of Mouza-Chandrasekharpur, Bhubaneswar, inasmuch as the permission granted under the power of attorney was already cancelled.

5. The case of the petitioner is that though opposite party no.6 was the owner of the aforesaid property, being not in a position to manage the same, he decided to alienate the said property to the petitioner and for that, he gave general power of

attorney authorizing the petitioner to execute the sale deed for transfer of the plot. Pursuant to the said general power of attorney, the petitioner remained in possession of the property and opposite party no.6 received an amount of Rs.25 lakhs from the petitioner to alienate the same through him. The land in question which was leasehold land was also converted to Stitiban land at the instance of the petitioner-power of attorney holder on payment of necessary premium by him to the General Administration Department. The petitioner also on the strength of the general power of attorney entered into an agreement to sale with his permission and for that, the aforesaid amount of Rs.25 lakh was handed over to the opposite party no.6 towards consideration. However, on account of delay in execution of the sale deed, opposite party no.6 filed Civil Suit No.1400 of 2017 in the court of Civil Judge (Senior Division), Bhubaneswar against the present petitioner seeking a decree of injunction

and also for declaration of his right, title and interest, wherein the petitioner being impleaded as defendant No.2 has already filed the written statement. His brother being arrayed as defendant no.1 in the said suit has filed his written statement-cum-counter claim wherein he has also made a prayer seeking injunction against opposite party no.6. In the said suit, opposite party no. 6 has taken a stand that the general power of attorney executed by him had already been cancelled on 29.05.2013 even though he received the amount thereafter. Furthermore, during pendency of the civil litigation, he lodged a complaint before the BDA to revoke the permission, which had been granted on 23.8.2013. Pursuant to the complaint, the petitioner was noticed by the BDA on 13.12.2019 to show cause. The petitioner had taken a specific ground that he has already paid the consideration money, and both he and his brother have already constructed the building over the said

property. But the revocation order was passed on the ground that the petitioner had made fraudulent statement and suppressed the material facts before the authority and as such vide impugned order the permission was cancelled. The petitioner has challenged the same in this writ petition on the ground that since the aforesaid revocation of the licence would affect the construction made by the petitioner and his brother on the strength of general power of attorney granted by opposite party no.6 and the civil suit being subjudice, the order impugned is completely illegal, bad in law and is liable to be quashed.

6. A counter affidavit has been filed by the contesting opposite party no.6 in this case. It is the case of the opposite party no.6 that the petitioner is the power of attorney holder and whatever action the BDA has taken is against him and not against the power of attorney holder and the petitioner as such is incompetent to challenge the Annexure-1.

Therefore, the petitioner has no authority to challenge the revocation of the permission in this writ petition. A stand has also been taken that the civil suit being not relatable to the revocation of the permission in any manner, the same could not have been a ground to challenge the same in this writ petition. However, it is not disputed that the general power of attorney was executed in favour of the petitioner as the opposite party no.6 was not in a position to look after his property. But, the petitioner played fraud with him and decided to sell the property in favour of his brother - Nirmal Chandra Ray. The opposite party no.6 when came to know the same from the communication of the G.A Department dated 18.2.2018. Opposite party no.6 refuted the sale of such property to Nirmal Chandra Ray as such G.A Department had not given any permission to the petitioner. However, without obtaining any permission from the G.A Department, the petitioner executed an agreement

for sale in favour of his brother on 24.5.2013. When he came to know about the same, he immediately cancelled the power of attorney on 29.5.2013. Since the aforesaid transaction was collusive one, the same is not binding on him. Thereafter, obtaining a sanction of plan showing him as a power of attorney holder, the petitioner and his brother have made forceful construction over the disputed land. After completion of work, when they tried to enter into the house, he filed civil suit for declaration of title and consequential relief. Thereafter, he applied for cancellation/revocation of the permission granted illegally. Knowing the aforesaid facts, the BDA having cancelled the permission granted, the petitioner has filed this writ petition challenging the same.

7. No counter affidavit has been filed by the opposite party-BDA.

8. During the course of hearing, learned counsel for the petitioner would submit that since the

petitioner is the general power of attorney holder and pursuant to same, he made an agreement with his brother for sale of the land after receipt of the consideration on behalf of the opposite party no.6, which was also handed over to him, as such the same is binding on the opposite party no.6. However, even if the general power of attorney is stated to have been cancelled, but the same having been made behind his back, the subsequent action of the power of attorney holder is binding on the principal. Since the petitioner had applied for approval of the plan and the plan was approved, the approved plan could not have been cancelled on the ground of suppression of facts. Furthermore, the same having been cancelled without giving reasonable opportunity of hearing to the petitioner, the same is also liable to be quashed. The same is more so in view of the fact that the order passed is bereft of reasons and as such, there was violation of the principle of natural justice.

9. However, the same is objected by the learned counsel for the BDA who submits that in the revocation order, the reason has been assigned that there was revocation of power of attorney prior to the application for permission made by the petitioner, as such the petitioner had no authority thereafter to act upon the power of attorney, and hence, the impugned order cannot be said to be bereft of reasons, and the submission advanced is without any substance.

10. Learned counsel for the opposite party no.6 echoing the submission of the learned counsel for the BDA would submit that the petitioner applied for permission for sanction of plan in the name of the principal and his such application being unauthorized one, the opposite party-BDA assigning the reasons has cancelled the same, and the same has caused no prejudice to the petitioner in any manner.

11. It appears from the submissions made on behalf of the parties that the Power of Attorney was not a Power of Attorney simplicitor, but it was a Power of Attorney on consideration and also permission for plan of sanction was made at the instance of the Attorney holder acting on behalf of the Principal. Even if the Power of Attorney was cancelled by the Principal which was unilateral one, the B.D.A. authority could not have proceeded with the matter without giving due opportunity of hearing to the petitioner and dealing with his objection assigning reasons. Therefore, there being violation of the principle of natural justice stand alone on that ground, the impugned order is unsustainable, more so when no reason has also been assigned for rejecting the ground taken by the petitioner while cancelling the plan sanctioned.

12. I would, therefore, allow the writ petition, set-aside the impugned order at Annexure-1 and remit back the matter to the Authority concerned to

dispose of the same within a period of one month of receipt of copy of this order giving an opportunity of hearing to the petitioner. Needless to say that the petitioner would appear before the Authority concerned with a copy of this order within one month hence, and then the Authority concerned by giving chance of hearing to all the parties to the proceeding including the petitioner, shall pass a reasoned order within the period stipulated. If any party fails to respond on the date of hearing, it shall be presumed that he has nothing more to say in the matter. It is made clear that this order should not be construed as expression of any opinion of this Court on the merit with regard to pending proceeding of revocation of the plan sanctioned in any manner.

13. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with

certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

MRS

