

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.30425 of 2021

(Through hybrid mode)

Rajendranath Mookerjee & others ***Petitioners***

Mr. K.K.Mishra, Advocate

-versus-

State of Odisha and others ***Opposite Parties***

Mr.Y.S.P. Babu, Addl. Govt. Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
07.01.2022

Order
No.

02. 1. Mr. Mishra, learned advocate appears on behalf of petitioners. He submits, his clients are true owners of the land. Opposite parties nos.5 to 10 have fraudulently dealt with the property by causing registration of a sale deed dated 2nd September, 2021, in respect thereof. He submits, his clients presented a cancellation deed for registration, for cancelling said sale deed dated 2nd September, 2021. He relies on Circular dated 23rd May, 2011 issued by Inspector General of Registration (IGR), Odisha. In the Circular there is extract of question and answer as in judgment of Full Bench of Andhra Pradesh High Court in **Yanala Malleshwari v. Smt. Ananthula Sayamma**, reported in **AIR 2007 AP 57**. Pursuant thereto, direction issued as in paragraph 3 of the Circular, quoted below.

“3. In view of the aforesaid principle of law decided by the Andhra Pradesh High Court analyzing various Supreme Court judgments there is no bar for the registering authority to exercise the inherent power of registering a cancellation deed by following the principles of natural justice. At the same time the registering authority may also commence prosecution against the person who has committed the fraud u/s.83 of the Registration Act, 1908. Thus the Registering Officer has power to accept and register a cancellation deed cancelling the earlier sale deed. But this power has to be exercised very carefully on appropriate cases. It is made clear that the Registering Officer shall not suomoto cancel the deed but can register a cancellation deed presented by the true owner but should suomoto commence prosecution.”

2. Mr. Babu, learned advocate, Addl. Govt. Advocate appears on behalf of opposite parties 2, 3 and 4. Records show that opposite parties 5 to 10 have been served. They go unrepresented. Mr. Mishra, submits, that they are the private opposite parties, who have practised fraud and alienated his clients' property.

3. Mr. Babu submits, counter has been filed. Paragraph-4 in the counter is reproduced below.

“4. That, in reply to the averments made in Para-1 of the writ petition, it is humbly submitted that, a Sale deed was presented by Sri Hansraj K. Rathor and others on dated 2.9.21 bearing Id No.1482105042 which was registered by the District Sub Registrar, Puri on dated 3.9.21.

Subsequently on dated 17.9.21, an objection petition was being received from Sri Anoop Kumar Dey for cancellation of this sale deed executed on dated 3.9.21 as per letter No.3700/IGR, dated

23.05.2011 issued by IGR, Odisha and Govt.
Notification dated 18.12.2012.

It is made clear that the Registering officer shall not suomoto cancel the earlier registered sale deed, but can register a cancellation deed presented by the true owner, but should suomoto commence prosecution against the erring person u/s-83 of the Registration Act-1908 pursuant to the principle of law decided by the Andhra Pradesh High Court in the case of Yanala Malleshwari-Vrs-Smt Ananthuk Sayamma reported in AIR 2007 AP-57.

On verification of objection petition of Sri Anoop Kumar Dey this registered sale deed is not a case fraud one committed by the true owner Sri Hansraj K. Rathor and others who are entitled to transfer the property basing on Record of Rights prepared by settlement authority, Puri. Along with a long period of Encumbrance Certificate from 1952 to March 2021.

The copies of registered sale deed ld. No.1482105042, objection petition date-17.09.21, letter No.3700/IGR are annexed herewith as Annexure-A/2, B/2, C/2 respectively.”

4. It appears constituted attorney of petitioners has filed the petition. It is the same person who presented cancellation deed before the registering authority. The registering authority has given basis of registration of original sale deed dated 2nd September 2021. Said authority has clearly stated that on verification of objection petition of the constituted attorney, the registered sale deed is not a case of fraud committed by true owner Hansraj K. Rathor and others. Record of Rights prepared by settlement authority, Puri and Encumbrance Certificate have been relied upon.

5. The writ petition raises disputed questions of fact. As such it is dismissed on the ground of maintainability.

6. Petitioners are at liberty to approach the civil Court with their grievance and claims. They can pray for interim protection, if they are able to satisfy said Court they are entitled to it.

7. The writ petition is dismissed.

(Arindam Sinha)
Judge

RKS

