

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.38578 of 2020

Shilorani @ Shailarani Mishra. *Petitioner*

-versus-

State of Odisha & others. *Opposite Parties*

CORAM: JUSTICE S.PUJAHARI

ORDER
30.03.2022

Order No.

03.

1. This matter is taken up through Hybrid mode.
2. Heard the learned counsel for the petitioner and the learned counsel for the State.
3. The grievance of the petitioner in this writ petition is that though he presented the sale deed for registration, but the opposite party no.5 without registering the same, returned the same for no reasons. However, the petitioner came to learn that in view of the instruction of the competent authority not to register the urban ceiling surplus land, her such sale deed was not accepted. But, it is the case of the petitioner that her land is not coming under the urban ceiling surplus land and, as such, a government land in view of the decision rendered by this Court in the case of *Fakir Charan Singh (since dead) represented by his Legal Heirs vrs. State of Orissa and others*, reported in

2013(I) OLR 125. Hence, the District Sub-Registrar could not have refused to accept her sale deed and register the same as the executant has executed the sale deed.

4. Counter affidavit has been filed by the opposite party no.5 indicating the fact that no such sale deed was presented and in view of the fact that instruction has been received not to register the lands mentioned which are urban ceiling surplus land, from the competent authority, this writ petition is devoid of merit.

5. During the course of hearing, the learned counsel for the petitioner has disputed that the petitioner had not presented the sale deed and her land was coming under the urban ceiling surplus land, in view of the fact that there was non-compliance of the twin conditions, i.e., payment of compensation by the Government as well as delivery of possession was taken of the said land. Therefore, the ground taken by the opposite party no.5 that the petitioner has no case for registration of her sale deed is devoid of merit as the authority taken such decision being guided by the communication of the competent authority. In support of his submission, learned counsel for the petitioner has placed reliance on a decision of this Court in the case of ***Fakir Charan Singh (supra)***.

6. However, the aforesaid submission of the learned counsel for the petitioner is vehemently opposed by the learned counsel for the State on the ground that the land in question

being a Government land, intimation has been given by the competent authority under Urban Land (Ceiling & Regulation) Act not to register such things to the District Sub-Registrar. The same cannot be said to be illegal in view of the mandate of Section 22-A of the Registration Act (Orissa Amendment) wherein the District Sub-Registrar is prohibited to register or transfer of a Government land at the instance of any other person.

7. In this case, it is seriously disputed that the aforesaid is an urban ceiling surplus land and vested with Government, as such, a Government land. So also, the competency of the Authority to give direction to the District Sub-Registrar not to exercise his statutory function, even though the District Sub-Registrar is prohibited under law to register a Government land at the instance of a private person as mandated in Section 22-A of the Registration Act (Orissa Amendment). But, the same is an independent decision of the Tahasildar who on enquiry being satisfied of the fact that the land is a Government land, can refuse to register the land and tender a memo of refusal, so also on demand of the parties, give the reasons of refusal. Therefore, he could not have been given instruction by the Authority to pass a blanket order prohibiting him not to register such land.

8. In view of the aforesaid, this Court dispose of this writ petition with a direction to the District Sub-Registrar concerned

to accept the sale deed of the petitioner on its presentation by the Executant and examine whether the land in question can be said to be an urban ceiling surplus land and, as such, a Government land, in the light of the decision rendered by this Court in the case of ***Fakir Charan Singh (supra)***, without being influenced by the aforesaid instruction of the competent authority and if it is found that the same is not at all a Government and, as such, registration is not prohibited under Section 22-A of the Registration Act (Orissa Amendment), to register the same. However, if it is otherwise opined that Section 22-A of the Registration Act (Orissa Amendment) is a bar for registration of the sale deed of the petitioner on such enquiry, return the same with a refusal memo and also if the petitioner demands the reasons of refusal, provide the reasons thereof as mandated in Section 73(2) of the Registration Act.

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

(S. Pujahari)
Judge

MRS