

(2025) 03 OHC CK 1390

In the Orissa High Court

Case No : Writ Petition (C) No. 4843 Of 2025

Daitari Jena

APPELLANT

Vs

State Of Odisha And Others Vs

RESPONDENT

Date of Decision : 12-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Registration Act, 1908 — Section 34(3), 71, 72
Contract Act, 1872 — Section 11, 23

Citation : (2025) 03 OHC CK 1390

Hon'ble Judges : A.C. Behera, J

Bench : Single Bench

Advocate : Vivekananda Jena, S. Nayak

Final Decision : Allowed

Judgement

A.C. Behera, J

1. This writ petition under Article 226 and 227 of the Constitution of India, 1950 has been filed by the petitioner praying for quashing/setting aside an order dated 31.01.2025 (Annexure-3) passed in Refusal Order/Case No.01 of 2025 by the District Sub-Registrar, Balasore (opposite party No.4) and to direct the said opposite party No.4 to register the deed of acknowledgement of adoption (which was presented by the petitioner before opposite party No.4 for registration and which has been returned back to the petitioner refusing its registration).

2. The case of the petitioner is that, after proper execution of a deed of acknowledgment of adoption on required stamp papers with signatures of donor, donees, witnesses and identifier on dated 29.01.2025, the same was presented before the District Sub-Registrar, Balasore (opposite party No.4) for its registration, but the opposite party No.4 refused to register the same on that day i.e. on 29.01.2025 and thereafter, the said opposite party No.4 as per Order dated 31.01.2025 (Annexure-3) passed an order in Refusal Order/Case No.01 of 2025 under Section 71 of the Registration Act, 1908 refusing to register that

deed and returned back the same to the petitioner assigning the reasons that:-

"an adoption arises out of a lawful contract between the biological parents and adopting parents in as much as the child under adoption can be a necessary party to such contract only after attaining the age of 18 years. Hence, in absence of any documentary evidence to prove the fact of valid adoption taking place inter alia before the child attaining the age of 18 years, it is incumbent upon both the parents to execute an instrument of "adoption" or "acknowledgment to adoption" by paying the proper stamp duty on it for the purpose of evidence. But, the parents preferring to wait further even after the adopted child attains majority and without any prior effort whatsoever to create valid documents including an instrument to that effect for the purpose of evidence, is a clear breach of contract finalized between them for creating the necessary evidence for the purpose of proving the valid adoption. So, after the adopted child has become major and attained the age of 27 years, the execution of the parents to the instrument of adoption is nothing but the breach of the prior contract and contravenes Section 11 read with Section 23 of the Indian Contract Act. As such, the executants in the instant instrument cannot be treated to be the lawful and purported executants under Section 34(3) of the Registration Act. So in view of Section 34(3) of the Registration Act, the document is refused under Section 71 of the Registration Act."

3. On being aggrieved with the above Order dated 31.01.2025 (Annexure-3) passed by the opposite party No.4 in Refusal Order/Case No.01 of 2025, he (petitioner) challenged the same by filing this writ petition praying for quashing (setting aside) the same and to direct opposite party No.4 to register that deed on the ground that, the order passed by the opposite party No.4 under Annexure-3 is illegal and contrary to the law. Because, the opposite party No.4 has no authority or jurisdiction under law to refuse the registration of the deed in question on the grounds enumerated in Section 34(3) of the Registration Act, 1908, as Section 34(3) of the Registration Act, 1908 does not empower any Registering Authority like the opposite party No.4 to refuse the registration of any deed expressing opinion on the merits and legal effect of the said deed in question.

4. I have already heard from the learned counsel for the petitioner and learned Additional Standing Counsel for the opposite parties (State).

5. As per the rival submissions of the learned counsels of both the sides, the crux of this writ is, "whether the Registering Authority i.e. the District Sub-Registrar, Balasore (opposite party No.4) has authority or jurisdiction under law as per Section 34(3) of the Registration Act, 1908 to refuse the registration of a deed questioning upon its merit, evidentiary value and legal effect?"

6. On this aspect the propositions of law has already been clarified by the Hon'ble Courts and Apex Court in the ratio of the following decisions:-

(i) In a case between Satya Pal Anand Vrs State of Madhya Pradesh and others

reported in (2016) 10 SCC 767, Registering Officer is only expected to reassure himself that, the document to be registered is accompanied by supporting documents. He is not expected to evaluate the title or irregularity in the document, as such. The Registering Officer cannot inquire into title, as his power is not quasi-judicial, but administrative in nature. Registering Officer cannot decide as to whether a document presented for registration is executed by person having title, as mentioned in the instrument.

(ii) In a case between Bilenbarric Steels Limited Vrs. Regional Development Commissioner for Iron & Steel and others reported in AIR 1991 Calcutta 62 (at Para 8), unless the relevant laws governing the matter provide clearly to that effect, such an authority cannot go into question of the merits of the transaction, to which, the document relate.

(iii) In a case between Ajay Kumar Yadav Vrs. State of Jharkhand and others reported in 2024 SCC Online Jharkhand 2127 (at para No.8), if the said sale deed is duly executed and sufficiently stamped and there is no legal or formal defect, this Court is of the considered view that, the Registering Authority cannot refuse to register the deed, if the same is presented for registration, as the Registering Authority is debarred from examining the nature of right, title and character in respect of the subject matter of the sale deed presented for registration, as the registering authority is debarred from examining the merit and consequential legal effect of the deed presented for registration.

7. Here in this matter at hand, the opposite party No.4 has refused to register the deed of acknowledgment of adoption presented by the petitioner applying the provisions of Section 34(3) of the Registration Act, 1908.

In order to have a clarity of this judgment, I thought it proper to place it on record to the provisions of Section 34(3) of the Registration Act, 1908 i.e.:-,

"The registering officer shall thereupon-

(a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and

(c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear."

Nothing appears from the above Section 34(3) of the Registration Act, 1908 authorizing the registering officer like the opposite party No.4 to enquire into the consequential legal effect as well as merit of the deed in question presented for registration and to refuse its registration expressing opinion on its merit.

8. When, Section 34(3) of the Registration Act, 1908 does not authorize any Registering Authority including the opposite party No.4 to refuse the registration of a deed of acknowledgment of adoption expressing opinions/reasons about the

consequential legal effect and evidentiary value of that deed like a judicial authority and when the duties of the opposite party No.4 are purely administrative in nature, then at this juncture, by applying the principles of law enunciated in the ratio of the aforesaid decisions of the Hon'ble Courts and Apex Court referred to supra as well as the provisions of Section 34(3) of the Registration Act, 1908, it is held that, the impugned order dated 31.01.2025 passed in Refusal Order/Case No.01 of 2025 by the opposite party No.4 refusing to register the deed of acknowledgment of adoption in question is bad and illegal under law.

So, there is justification under law for making interference with the same through this writ petition filed by the petitioner, even though, he (petitioner) has not approached the Appellate Authority under Section 72 of the Registration Act, 1908 to challenge the same.

On this aspect, law has already been settled by the Apex Court in the ratio of the decision reported in (2024) 6 SCC 579, PHR Invent Educational Society Vrs. UCO Bank and others (at Para No.37) that,

"a petition under Article 226 of the Constitution of India, 1950 could be entertained in spite of availability of an alternative remedy like appeal under the following grounds i.e.

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) where the statutory authority has acted in defiance of the fundamental principles of judicial procedure;
- (iii) where the statutory authority has resorted to invoke the provisions, which are repealed; and
- (iv) when an order has been passed by the statutory authority in total violation of the principles of natural justice."

9. Here in this writ petition at hand, when as per the discussions and observations made above, it has been held that, the statutory authority i.e. the District Sub-Registrar, Balasore (opposite party No.4) has not acted in conformity with the provisions of law i.e. Registration Act, 1908 refusing to register the deed of acknowledgment of adoption on dated 29.01.2025, then at this juncture, it cannot be held that, the writ petition filed by the petitioner is not maintainable under law.

For which, in other words, in view of the ratio of the above decision of the Apex Court reported in (2024) 6 SCC 579, PHR Invent Educational Society Vrs. UCO Bank and others, it is held that, the writ petition filed by the petitioner challenging the order dated 31.01.2025 (Annexure-3) passed in Refusal Order/Case No.01 of 2025 by the opposite party No.4 is maintainable under law in spite of availability of an alternate remedy before an appellate forum to challenge the

same.

10. As such, there is merit in the writ petition of the petitioner. The same must succeed.

11. In result, the writ petition filed by the petitioner is allowed on contest.

The order dated 31.01.2025 (Annexure-3) passed in Refusal Order/Case No.01 of 2025 by the District Sub-Registrar, Balasore (opposite party No.4) under Section 71 of the Registration Act, 1908 is quashed/set aside.

The District Sub-Registrar, Balasore (opposite party No.4) is directed to register the deed of acknowledgment of adoption (which has been returned back to the petitioner by the opposite party No.4) on the very same day of presentation of that deed by parties before him (opposite party No.4) with the certified copy of this judgment w.e.f. 29.01.2025 complying the formalities of registration and to return that deed within three days of its registration.

12. Accordingly, the writ petition is disposed of finally..

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