
(1980) 07 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 674 of 1980

Hrushikesh Panda

APPELLANT

Vs

Block Development Officer and Another

RESPONDENT

Date of Decision : 04-07-1980

Acts Referred:

Orissa Grama Panchayat Rules, 1968 — Rule 87

Citation : (1980) 50 CLT 134

Hon'ble Judges : R.N. Misra, J;N.K. Das, J

Bench : Division Bench

Advocate : G. Rath, for the Appellant; P.K. Mohapatra, S.K. Patnaik and B.K. Nanda, for the Respondent

Judgement

R.N. Misra, J.—The right to collect fee from the hat belonging to Salabani Grama Panchayat located in the district of Keonjhar is settled by annual auction. Petitioner was the highest bidder for the year 1980-81 as would appear from Annexure-1. He was called upon to execute the agreement in the prescribed form and have it registered at his cost failing which acceptance of Petitioner's bid would be vacated and there would be a fresh settlement. On receipt of the notice, Petitioner filed this writ application for quashing of the direction for registering the document and obtained an order of stay of enforcement of the direction.

2. The Grama Panchayat Extension Officer has filed a counter affidavit on behalf of opposite party No. 1 and has contended that under Rule 87(j) of the Orissa Grama Panchayats Rules, 1968, the successful bidder is required to execute a registered agreement with the Grama Panchayat in the prescribed Form-A.

3. Rule 87(j) provides:

After receipt of the order of confirmation of the bid from the Subdivisional Officer or confirming the auction sale conducted by the Junior Officer, the Block Development Officer shall direct the Successful bidder to deposit the first

instalment of the bid money and execute the agreement in the appropriate form prescribed with the concerned Grama Panchayat within fifteen days from the date of receipt of the notice and shall forward a copy of the confirmation Order to the Sarpanch. The agreement shall be registered and the cost of registration of such agreement shall be paid by the auction purchaser. If the auction purchaser fails to execute the agreement or deposit the first instalment within the said period, the property shall be put to fresh auction by the Block Development Officer, or his Junior Officer as the case may be....

The statutory Form "A" is prescribed for lease of market. The question for consideration is whether the right granted to the Petitioner of collecting tolls and fees from the market is indeed a lease. If it would not be a lease or no right, title or interest in immovable property would be conveyed, it is contended by Mr. Rath for the Petitioner, the arrangement would not amount to a lease and there would be no necessity for registration. In the instant case, there is no dispute that the auction was held in terms of Rule 87 nor is there any dispute that Form "A" is the statutory form prescribed for agreement for lease of market. It may be that the agreement may not require registration under the general law, but one is not entitled to contend that a rule which requires the agreement otherwise not required to be registered would be bad on that ground. It is open to the State Government the rule-making authority under the statute with a view to safeguarding the interest of the Grama Panchayat to require registration of the agreement. Once the rule requires registration of the agreement. Once the rule requires registration, it is not for us to test the wisdom of the rule-making authority with reference to the registrability of a document of this type under the general law.

4. Learned Standing Counsel relied upon a decision of the Supreme Court in the case of Qudrat Ullah Vs. Municipal Board, Bareilly, , in support of his contention that the document required registration. Mr. Rath for the Petitioner took the stand that the document which was under consideration before the Supreme Court was a composite one; interest in immovable property had also been created in favour of the lessee apart from the mere right to collect toll and fees. We are inclined to agree with Mr. Rath that the conclusion of the Supreme Court about the requirement of registration was based upon the peculiar facts involved in the case before it and in the present setting, the ratio of the decision may not be applicable. But as we have pointed out, it was within the competence of the State Government to require registration and no grievance can be made of the requirement.

5. We think it appropriate to bring it to the notice of the State Government that many of the annual auctions are for petty amounts. Usually, interest in immovable property is not created by such arrangements and the agreement evidencing such a transaction would not require registration under the general law. The requirement of registration of such agreements would ordinarily cast unnecessary burden on the auction purchaser. The position as to whether

registration in every case should be made compulsory as required in Rule 87(j) should, therefore, be reexamined by the State Government and appropriate measure taken at an early date.

6. The Petitioner, in our opinion, should be given time to register the document. We would accordingly allow him a month's time from now to comply with the direction under Annexure-1. The writ application is disposed of with the aforesaid direction. There would be no order for costs.

N.K. Das, J.

7. I agree.