
(2014) 05 OHC CK 0030

In the Orissa High Court

Case No : W.P. (C) No. 3322 of 2012

Santosh Kumar Routray (dead) and Prasana Kumar Routray
and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 11, 12, 13, 14
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 4

Citation : AIR 2014 Ori 133 : (2014) 118 CLT 684 : (2014) 2 ILR 375 : (2014) 2 OLR 305

Hon'ble Judges : B.K. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—In this writ petition, prayer has been made to quash the order under Annexure-5 passed by the opposite party no. 3-District Sub-Registrar, Cuttack refusing to register sale-deed under Annexure-4, and to direct the opposite party no. 3 to admit the sale-deed under Annexure-4 for registration.

2. Upon death of original writ petitioner late Santosh Kumar Routray, his legal heirs have been substituted as the writ petitioners.

3. Facts in brief, for the purpose of adjudication of this writ petition, are as follows:

Case land, corresponding to a part of Sabik Plot No. 495 of mouza Gandarpur, was the undivided joint family property belonging to the joint family headed by late Gajendra Prasad Routray, father of late Santosh Kumar Routray and Sangram Keshari Routray. During the life time of late Gajendra Routray late Santosh Kumar Routray filed partition suit bearing Title Suit No. 37 of 1982 in the Court of learned Sub-Judge, Cuttack impleading his father late Gajendra Routray, mother late Susama Devi and brother Sangram Keshari Routray as

defendants. By judgment and preliminary decree dated 28.1.1987 at Annexure-3 Title Suit No. 37 of 1982 was decreed in part holding late Santosh Kumar Routray to be entitled to 1/4th share in the joint family property including case land under Sabik Plot No. 495. In the meanwhile, Urban Land (Ceiling & Regulation) Act, 1976 (for short, "the Act") had come into force. No notice was served on late Santosh Kumar Routray by the competent authority for filing statement/return as provided u/s 6 of the Act. However, on the basis of returns filed by Sangram Keshari Routray and late Sushama Devi, U.L.C. Case No. 142 of 1976 and U.L.C. Case No. 143 of 1976 respectively were registered. Orders passed by the competent authority under the Act in U.L.C. Case No. 142 of 1976 and U.L.C. Case No. 143 of 1976 were challenged by Sangram Keshari Routray and Sushama Devi in U.L.C. Appeal Nos. 110 and 111 of 1984 which were dismissed by common order dated 18.4.1987. Thereafter, notification dated 23.3.1994 containing declaration u/s 10(3) of the Act, copy of which is Annexure-A/2 to the counter-affidavit was issued by the competent authority. The Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force with effect from 22.3.1999 and was adopted by the State Government with effect from 5.4.2002. Late Santosh Kumar Routray filed W.P. (C) No. 10011 of 2004 before this Court with a prayer to quash the orders passed by the competent authority in U.L.C. Case No. 142 of 1976 and U.L.C. Case No. 143 of 1976, common order passed by the appellate authority in U.L.C. Appeal Case Nos. 110 and 111 of 1984 as well as the notification under Annexure-A/2. Order dated 21.5.2005 passed by this Court disposing of W.P. (C) No. 10011 of 2004 reads as follows:

The entire case is covered by our judgment dated 5th of September, 2007 passed in W.P. (C) No. 998 of 2006 Manmohan Lal Vs. State of Orissa and Others, in which this Court has held as follows:

4. Abatement of legal proceedings-All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or other authority shall abate:

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

The aforesaid Act (i.e. Urban Land (Ceiling and Regulation) Repeal Act, 1999 was adopted by the State Government as mentioned above, with effect from 5.4.2002. In the said resolution by the State Government adopting the aforesaid Act of 1999, it was declared that no compensation should be paid for land, possession of which has not been taken over by the State Government after vesting u/s 10(3) of the U.L.C. Act and the legal processes initiated under the said Act will also be closed.

Therefore, this writ petition is also disposed of in terms of the said order and it is directed that as the urban land ceiling stands abated and the land in question stands vested in the petitioner, the opposite parties are directed to act accordingly.

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4. In the backdrop of the above narrated facts late Santosh Kumar Routray through his Power of Attorney Holder the substituted writ petitioner No. 1(a) Prasanna Kumar Routray executed sale-deed under Annexure-4 and presented it for registration before opposite party no. 3-District Sub-Registrar, Cuttack upon which opposite party no. 3-District Sub-Registrar, Cuttack, in purported exercise of the jurisdiction u/s 22(A) of the Registration Act, 1908 passed the impugned order at Annexure-5 which reads as follows:

DISTRICT REGISTRATION OFFICE, CUTTACK

No.

Date

The transaction of Sabak Plot No. 495 of Sabak Mouza Gandarpur has been acquired and vested in Govt. Revenue(D.M.) Dept. U/s. 10(3) of the Urban Land Ceiling & Registration Act, 1976 communicated to his office vide Letter No. 1086 dt. 31.3.2002 by Competent Authority Urban Land Ceiling Collectorate, Cuttack.

Hence the document presented for Regn. is denied as it affects Sec-22(A) of Indian Registration Act.

Sd/- District Sub-Registrar, Cuttack

Memo No. 53 Dt. 06.01.2012

Copy to Sri Prasanna Kumar Routray, At-Susama Bhawan Building, P.O. College Square, Dist. Cuttack for information.

Sd/- District Sub-Registrar, Cuttack

5. Petitioners' case is that the original writ petitioner was all through in possession of the land proportionate to his share exclusively subject to final allotment to be made in the final decree proceeding. The order passed by this Court in W.P. (C) No. 10011 of 2004 has become conclusive and binding having reached its finality between the parties. A copy of the order passed by this Court was placed before the opposite party no. 3-District Sub-Registrar, Cuttack in order to convince that the case land has already vested with the petitioner. It is averred that any order/letter communicated by any authority to the District Sub-Registrar intimating that the case land being ceiling surplus land has vested in the State lacks legal authority or competency to supersede and transgress the order passed by this Court. However, opposite party no. 3 illegally passed the order in purported exercise of power u/s 22(A) of the Registration Act, 1908, adverting to the notification under Annexure-A/2 containing declaration u/s 10(3)

of the Act to the effect that land including the case land shall be deemed to have been acquired by and to have vested absolutely in the State Government.

6. Counter affidavit has been filed on behalf of opposite party no. 1 being authorized by opposite party no. 2 also. In resisting the petitioner's claim it has been averred in the counter affidavit that orders dated 28.12.1983 were passed by competent authority under the Act declaring the surplus land, including the case land held by late Susama Devi and Sangram Keshari Routray on the basis of returns filed by them in U.L.C. Case Nos. 142 of 1976 and 143 of 1976 which orders were confirmed by common order passed by Member Board of Revenue in U.L.C. Appeal Nos. 110 and 111 of 1984. The petitioner preferred W.P. (C) No. 10011 of 2004 after lapse of 17 years which was disposed of by order dated 21.5.2009 with a direction that urban land ceiling stands abated and the case land stands vested in the petitioner. The only stand on the basis of which opposite parties appear to defend order under Annexure-5 passed by the District Sub-Registrar, occurring at paragraph-9 of the counter affidavit, reads as follows:

It is pertinent to mention here that instead of the land in question stands vested in the Government wrongly it has been mentioned that the land in question stands vested in the petitioner. After the said fact came to the notice of the present dependent steps has been taken for modification of the order dated 21.5.2009 passed by this Hon"ble Court in W.P. (C) No. 10011 of 2004.

According to the opposite parties, after declaration of surplus land held by the returnee, in accordance with orders passed in U.L.C. Case Nos. 142 of 1976 and 143 of 1976, and U.L.C. Appeal Nos. 110 and 111 of 1984, notification dated 23.3.1994 u/s 10(3) of the Act at Annexure-A/2 to the counter-affidavit was issued upon which the case land vested absolutely in the State. Possession of the case land was taken over by the Tahasildar, Sadar, Cuttack and reported to the competent officer by letter dated 8.3.1993 at Annexure-B/2. A land schedule containing description of lands, including the case land, possession of which were taken over was communicated by the competent authority under the Act to opposite party no. 3-District Sub-Registrar, Cuttack under Memo No. 1088 dated 31.5.2002 at Annexure-C/2. In such circumstances, opposite party no. 3 has rightly refused to register sale-deed at Annexure-4 in exercise of power u/s 22-A of the Registration Act.

7. Sri S.S. Das, learned Senior Advocate appearing for the petitioners contended that opposite parties have failed to show that there was any notification with regard to the case land in terms of Section 22-A of the Registration Act indicating prohibition of registration of sale-deed under Annexure-4 to be opposed to public policy. It was vehemently contended that refusal on the part of opposite party no. 3-District Sub-Registrar, Cuttack to effect registration of sale-deed at Annexure-4, on the face of the unambiguous direction made by this Court in W.P. (C) No. 10011 of 2004 to the effect that case land vested in the petitioner is contemptuous and contrary to settled principles of judicial discipline. Opposite party no. 3 having acted contrary to order passed by this Court, direction in the

nature of writ of mandamus is required to be issued for effecting registration of sale-deed. It was also contented that order in W.P. (C) No. 10011 of 2004 was passed on contest upon consideration of pleadings made in the writ petition as well as counter-affidavits filed by opposite party nos. 1-Commissioner-Cum-Secretary, Housing & Urban Development Department and opposite party no. 2-Special Officer & Competent Authority under the Act, and placing reliance on an earlier decision of this Court. In passing order in W.P. (C) No. 10011 of 2004, this Court has upheld the claim of the petitioner to be in physical possession of the case land. The opposite parties being aware of the legal position have taken an untenable plea that this Court wrongly mentioned that the case land stands vested in the petitioner instead of mentioning that it vested in the Government, and have vaguely averred that step has been taken for modification of the order passed in W.P. (C) No. 10011 of 2004 without indicating with regard to nature of steps stated to have been taken. It was argued that so long as order passed in W.P. (C) No. 10011 of 2004 has not been stayed, modified, altered or rescinded, registration of sale-deed at Annexure-4 cannot be refused on the pretext that wrongly in the order passed by this Court it has been mentioned that the case land vested in the petitioner.

Learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, to urge that order passed by High Court in a writ petition under Article 226 of the Constitution will operate as bar against subsequent petition even in the Supreme Court under Article 32 of the Constitution in view of the principle of *res judicata*. It was argued that so long as earlier order of this Court in W.P. (C) No. 10011 of 2004 remains in force, it is not permissible to urge that there is any error in the order. Sri S.S. Das, learned Senior Advocate also brought to the notice of this Court decision in *Manmohan Lal Vs. State of Orissa and Others*, , on which reliance was placed by this Court in passing order in W.P. (C) No. 10011 of 2004, to urge that the order passed by this Court in W.P. (C) No. 10011 of 2004 is based on the finding that in spite of notification at Annexure-A/2 purported to have been issued u/s 10(3) of the Act, letter of Tahasildar, Sadar, Cuttack at Annexure-B/2 regarding taking over possession and Memo No. 1088 dated 31.5.2002 at Annexure-C/2 of the competent authority under the Act to opposite party no. 3-District Sub-Registrar, Cuttack containing list of surplus lands including case land, the original writ petitioner was all along in possession over the case land. Sri S.S. Das learned Senior Advocate also placed reliance on decision in *Union of India and others Vs. Kamlakshi Finance Corporation Ltd.*, wherein it has been laid down that principles of judicial discipline require that the orders of the higher authorities should be followed unreservedly by the subordinate authorities. Placing reliance on ratio of the decision in *The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal*, it was argued that refusal on the part of opposite party no. 3 to register the sale-deed amounts to refusal to carry out the order of this Court in W.P. (C) No. 10011 of 2004, and therefore, a writ is required to be issued to opposite

party no. 3 for effecting registration of sale-deed.

8. In reply, learned counsel for the State appearing for opposite parties submitted that notification at Annexure-A/2 and letters at Annexures B/2 and C/2 clearly go to show that possession over the case land was taken over by the State consequent upon orders passed in U.L.C. Case Nos. 142 of 1976 and 143 of 1976. In such circumstances, the provision of abatement under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 shall not apply in view of proviso to Section 4 of the said Act. In W.P. (C) No. 10011 of 2004, therefore, it has been erroneously observed that the case land stands vested in the petitioner. It was submitted that the opposite parties have taken steps to get the order reviewed and modified. However, no particular of such review or modification petition was brought to the notice of the Court in course of hearing. It was also not disputed that order passed by this Court in W.P. (C) No. 10011 of 2004 has not been stayed, modified, altered or rescinded so far.

9. The only question that arises for determination in the case is as to whether opposite party no. 3-District Sub-Registrar, Cuttack was justified in refusing registration of sale-deed at Annexure-4 on the ground that case land had been acquired and vested in the State u/s 10(3) of the Act communicated to the office of the District Sub-Registrar by Memo at Annexure-C/2 on the face of order passed by this Court in W.P. (C) No. 10011 of 2004. The opposite parties have made an attempt to adopt the stand that as possession of the case land had been taken over by the State as communicated by the Tahasildar by letter at Annexure-B/2 consequent upon notification dated 23.3.1994 by the competent authority at Annexure-A/2, provision for abatement under the Urban Land (Ceiling and Regulation) Repeal Act, 1999 is not applicable to the case land. However, it appears from the writ petition in W.P. (C) No. 10011 of 2004 that original writ petitioner late Santosh Kumar Routray had categorically made his claim to be in possession over the case land all through. It was pleaded at paragraphs-14 and 17 of the writ petition as follows:

14. That, the petitioner has been all through in possession of the aforesaid plots proportionate to his share exclusively subject to the final allotment to be made in the final decree proceeding. Surrender of any land purported to be in excess of the ceiling limit u/s 9 of the Act by the competent authority under the said Act can not affect the right, title and interest of the petitioner ignoring the decree passed by the Civil Court in Annexure-2.

17. That, the opposite parties 1 and 2 claim to have taken possession of the surrendered plots by a Notification dt. 23.3.1994 published in the Extra-ordinary Orissa Gazette dt. 29.3.1994, but the petitioner still continues to be in possession as before. The writ petitioner further submits that if possession is found to have been taken by opposite parties 1 and 2, the same is symbolical possession as distinguished from actual physical possession.

In their counter affidavits, opposite party nos. 1 and 2 controverted petitioner's

claim to be in possession and averred that possession of the case land had been taken over by the Tahasildar as communicated by letter at Annexure-B/2. Order dated 21.5.2009 was passed in W.P. (C) No. 10011 of 2004 by the Division Bench on contest holding that proceedings under Urban Land Ceiling Act in respect of case land stands abated and the case land stands vested in the petitioner. Thereby, the claim of the original writ petitioner to be in possession of the case land has been judicially upheld. In such circumstances, at present, there is no scope for the opposite parties to urge that possession of the case land had been taken over on behalf of the State. On the contrary, in unequivocal and unambiguous term, this Court having declared the case land to have vested in the petitioners' predecessor-in-interest, the original writ petitioner, the order passed by opposite party no. 3-Sub-Registrar, Cuttack refusing registration of the case is unsustainable being contemptuous and contrary to the order of this Court.

In view of the above, the writ petition is allowed. Order passed by opposite party no. 3-Sub-Registrar, Cuttack under Annexure-5 is quashed. Opposite party no. 3-Sub-Registrar, Cuttack is directed to effect registration of sale-deed under Annexure-4 forthwith not later than two weeks from today.