

## **HIGH COURT OF ORISSA ; CUTTACK**

**CRLREV NOS.734,742,743,744 & 745 OF 2014**

From an order dated 16.7.2014 passed by learned Addl. Sessions Judge, Bhubaneswar in Crl. Revision Nos.1/18 to 5/22 of 2014.

State of Odisha

... Petitioner  
(in all cases)

Versus

Tirupati Panigrahi & others

... Opposite Parties  
(in all cases)

For petitioner : Addl. Government Advocate  
(in all cases)

For opposite parties : M/s. Manas Mohapatra,  
(in all cases) S.Mohanty, S.Pattnaik  
And D.Dash.

**P R E S E N T :**

**THE HONOURABLE MR. JUSTICE S.K.MISHRA**

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***Date of judgment: 25.02.2015***

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**S.K.Mishra,J.** The issues and point of law being common in all these revisions, they are being disposed of by this common order.

2. The State of Odisha represented by the Superintendent of Police (CID & CB), Economic Offences Wing (petitioner in all

revisions) has filed all these revision applications challenging the order dated 16.7.2014 passed by the learned Addl. Sessions Judge, Bhubaneswar in CrI. Revision Nos.1/18 to 5/22 of 2014 thereby permitting the opposite parties to effect the sale of flats in projects of Hi-Tech Plaza, Kalyan Plaza Annex, Hi-Tech Plaza Annex and Hi-Tech Heaven.

3. Admittedly, in all these cases a preliminary charge sheet has already been filed keeping the investigation open. In all the cases apart from Tirupati Panigrahi, Tirupati Choudhury and Madhusudan Panigrahi, the two Companies namely, M/s.Hitech Estates and Promoters Pvt. Ltd. and Rajdhani System and Estate Pvt. Ltd. were also implicated as accused. The aforesaid Tirupati Panigrahi, Tirupati Choudhury and Madhusudan Panigrahi were arrested in course of investigation and their bail applications were rejected by this Court. They had approached the Supreme Court in S.L.P. (CrI.) No.6749 to 6751 of 2013 and others and the Hon'ble Supreme Court as per its order dated 21.2.2014 released the accused persons in an interim bail after they deposited Rs.10 crores out of Rs.63,55,49,227/- with an undertaking to deposit the balance amount within a period of three months. However, the Hon'ble Supreme Court refused to pass any orders as the petitions filed by the accused to sale the Flats/Apartments. The said order is quoted below:-

“In so far as the request of the petitioners for permission to effect sale of flats in projects of Hi-Tech Plaza, Kalyan Plaza Annex, Hi-Tech Plaza Annex and Hi-Tech Heaven is concerned we are not prepared to pass any order at this stage. However, we permit the petitioners to make appropriate applications in this regard before the Additional Sessions Judge, Khurda, Bhubaneswar in connection with FIR Nos.11/2012, 4/2013, 1/2013, 12/2012 and 2/2013.

If and when such application is filed we direct the learned Addl. Sessions Judge to consider the same in accordance of law

without being influenced by any one of the observations made by us in this course of this order.”

4. The opposite parties in pursuant to the said order passed by the Hon’ble Supreme Court filed applications before the learned S.D.J.M., Bhubaneswar in Criminal Misc. Case No.74/2014 to 78/2014 seeking permission to effect the transfer of the flats. Those applications were rejected by the learned S.D.J.M., Bhubaneswar on 22.3.2014.

5. Challenging the said orders of rejections, the opposite parties filed CrI. Revision Nos.18 of 2014 to 22 of 2014 before the learned Sessions Judge, Khurda at Bhubaneswar under Section 397 of the Cr.P.C. The said revisions were transferred to learned Addl. Sessions Judge, Bhubaneswar. After hearing, the learned Addl. Sessions Judge, Bhubaneswar vide order dated 3.5.2014 dismissed all the Criminal Revisions.

6. The opposite parties therefore challenged the said orders of dismissal of the Criminal Revisions filed Criminal Misc. Case Nos.2594 of 2014 to 2598 of 2014 and the said cases were disposed of by this Court vide order dated 24.6.2014. The said order reads as follows:-

“Considering the limited nature of grievance, the petitioner is permitted to file fresh application of sale/transfer of flats in question, accompanied by the requisite title deeds and other necessary documents, in support of his claim of right, title and interest over the same flats, which shall be considering by the learned court below on its own merit and in accordance with law.

If the petitioners file such an application before the learned court below within one week hence the same shall be considered and disposed of as expeditiously as possible preferably within a period of three weeks thereafter.”

7. After disposal of the aforesaid Criminal Misc. Cases, the opposite parties filed fresh applications before the learned Addl. Sessions Judge, Khurda at Bhubaneswar, which were registered as Criminal Revision Nos.1/18 of 2014, 2/19 of 2014, 3/20 of 2014, 4/21 of 2014 and 5/22 of 2014. In all these cases, the present petitioners had challenged the maintainability of the applications and prayed for dismissal of the same. The learned Addl. Sessions Judge vide order dated 16.7.2014 allowed the Revision Applications.

8. Learned Addl. Sessions Judge, Bhubaneswar after taking into consideration various aspects of the case regarding the ownership of the flats, conversion to homestead land, permission of appropriate authorities, etc. passed the following order:-

“After going through the documents filed by the petitioners and after hearing from both the sides, it appears that the petitioners have purchased the land in question and constructed flats thereupon with approval of the competent authority. They have also mutated the land in the name of their company and make conversion of the land to the status of “Gharabari”. As the plan is approved by the Government, it appears the flats are constructed with the norms of Orissa Apartment Ownership Act, 1982. Taking into consideration the above facts, the petitioners are permitted to effect the sale of flats in projects of Hi-Tech Plaza, Kalyan Plaza Annex, Hi-Tech Plaza Annex and Hi-Tech Heaven. The petitioners are further directed to transfer only the flats approved by the competent authority and any flat if unauthorisedly constructed deviating the approved plan shall not be alienated in any manner to the customers. Accordingly, the petition is disposed of.”

Such orders are challenged in these Revisions.

9. At the outset, it is noted that the petitioners in these cases have not challenged the impugned orders passed in the aforesaid Criminal Revisions by the learned Addl. Sessions Judge,

Bhubaneswar on the question of facts. It does not challenge the fact that flats were constructed by the companies after obtaining due permission after purchase of land etc. The only challenged is regarding the jurisdiction, maintainability and propriety of the order passed by learned Addl. Sessions Judge, Bhubaneswar.

10. In course of hearing, learned counsel for the Economic Offence Wing (EOW) Mr. Bhuyan argued that learned Addl. Sessions Judge, Bhubaneswar after dismissal of Criminal Revision Nos.18 to 2014 to 22 of 2014 has become functus officio. Therefore, entertaining fresh revisions on 29.6.2014 in absence of any order of remand is illegal and without jurisdiction. Hence it is a nullity.

11. Secondly, it is further contended by the learned counsel for the EOW that Section 397 of the Cr.P.C., the learned Addl. Sessions Judge, Khurda at Bhubaneswar is only authorise to adjudicate the legality, propriety and error relating to the impugned order passed by the learned S.D.J.M., Bhubaneswar in Criminal Misc. Case Nos.74 of 2014 to 78 of 2015. It is, therefore, urged that the learned Addl. Sessions Judge, Khurda has no jurisdiction to entertain fresh applications, especially when the previous Criminal Revision Nos.18 of 2014 to 22 of 2014 were already dismissed vide order date 3.5.2014.

12. Thirdly, it is contended by the learned counsel for the EOW that the revisional court has no power to exercise the original jurisdiction which is vested with the learned Magistrate only. Therefore, it was contended that neither the order of the Supreme court nor the order of the High Court entrusted jurisdiction to the learned Addl. Sessions Judge to exercise power, which has never been conferred on him in the Code of Criminal Procedure, 1973(hereinafter referred to as the "Code" for brevity). Therefore, it is contended that entertainment of fresh

application with the nomenclature having Crl. Revisions is without jurisdiction and hence it is a nullity.

13. Fourthly, it is contended by the learned counsel for the EOW that the Hon'ble Supreme Court has observed in the S.L.P. that the opposite parties are at liberty to approach the learned Addl. Sessions Judge, Khurda at Bhubaneswar and if such an application is filed, the same should be considered and disposed of in accordance with law without being influenced by any of the observations made in the said order. It is therefore contended that the learned Addl. Sessions Judge, Khurda at Bhubaneswar was directed to deal with the matter in accordance with law and not ignoring the same and in absence of any provisions in the Code authorizing the learned Addl. Sessions Judge, Khurda at Bhubaneswar to receive application and exercise the power of original jurisdiction, the learned Addl. Sessions Judge, Khurda at Bhubaneswar has committed error of law in holding that the Supreme Court has authorised him to deal with the application.

14. Fifthly, it is contend by the learned counsel for the EOW that the documents produced before the revisional court by the opposite parties revealed that the properties were purchased in the name of the Companies. Therefore, permitting the individual to sale the properties belonging to the company for the benefit of other individuals, i.e. to deposit the sale profits before the Hon'ble Apex Court for enlarging them in bail cannot be considered as permission to the company to meet its legal necessity.

15. Lastly, it is contended by the learned counsel for the EOW that the criminal cases in question were initiated with the allegations of cheating and defrauding the innocent individuals. Ultimately, in case it is found that out of the investment of those innocent people the property in question was acquired at the end of the trial, the Court may pass an order of confiscation so that

the investors can receive their amounts in which events the present purchasers those are permitted to acquire the property by the order of the Court will ultimately be at the receiving end.

16. At the outset, it is noted that the investigating agency has not seized the flats/apartments in question in course of investigation. No application has been made before the learned District Judge, Khurda at Bhubaneswar under the provisions of Criminal Law Amendment Ordinance, 1944 for attachment of the properties. As no property has been seized, no report has been submitted regarding such seizure to the learned S.D.J.M. So an application under Section 457 of the Code is out of question as the learned Magistrate has jurisdiction only in case a property is seized and reported to him. Only on such event, he can pass an order under Section 457 of the Code for release of the same.

17. Now the question arises where the learned Addl. District and Sessions Judge, Khurda at Bhubaneswar has the jurisdiction to entertain the application filed by the opposite parties. There is no dispute that the Hon'ble Supreme Court gave permission to the accused to file appropriate application before the learned Addl. Sessions Judge to permit them to effect sale of flats. The order of the Apex Court is the law of the land. Article 141 of the Constitution of India provides that the law declared by the Supreme Court shall be binding on all Courts within the territory of India, so any other interpretation that the learned Addl. Sessions Judge, who was directed to dispose of the applications will in fact be violative of principles enunciated under Article 141 of the Constitution of India.

18. Keeping the fact in view, this Court is of the opinion that the learned Addl. Sessions Judge, Khurda at Bhubaneswar has not committed any error on record by entertaining the applications filed by the petitioners for according necessary

permission to sale flats/apartments for the purpose of raising funds to be deposited before the Registry of the Hon'ble Apex Court. This takes care of the first four contentions raised by the learned counsel for the EOW.

19. In the meantime, it is borne out from the record that after passing of the order by the learned Addl. Sessions Judge, Khurda, at Bhubaneswar the opposite parties approached for registration of the sale deeds in favour of different purchasers before the Sub-Registrar, Jatni. However the Sub-Registrar, Jatni instead of registering the sale deeds in accordance with law, sought for clarification from the Superintendent of Police (CID & CB), Economic Offence Wing and the District Registrar, Khurda, respectively, and has withheld registration of the sale deeds. Thereafter, two companies namely, M/s. Hi-Tech Estates and Promoters (P) Ltd. and M/s. Rajdhani Systems & Estates Pvt. Ltd. had challenged that the action of the Sub-Registrar, Jatni in the original jurisdiction of this Court. Their application was registered as W.P.(C) No.17313/2014. The said writ petition was disposed of on 30.9.2014. After taking into consideration the entire materials available on record, learned Single Judge of this Court allowed the writ petition directing opposite party no.5 (in that case) i.e. the Sub-Registrar, Jatni to effect registration of the sale deeds executed by the petitioners (in that case) in accordance with the permission granted by the learned Additional Sessions Judge, Bhubaneswar in case there is no other legal impediment.

20. In the aforesaid backdrop, now it is the duty of this Court to examine the contention that in fact the learned Addl. Sessions Judge has permitted the individual to sale the property in question and to deposit the sale proceeds before the Hon'ble Apex Court for enlarging them on bail and it is not considered to be for the benefit of the company in question.



21. First of all, it is seen that two companies have filed the aforesaid writ petition seeking direction of the Court to the Sub-Registrar, Jatni for registration of the sale deed. So it cannot be said that the individuals are selling the properties in question to the benefit of purchasers. Additionally, it is noted that the aforesaid two companies were also arrayed as accused in the criminal cases pending before the trial court. So one can not say that raising money by sale of the properties, which, prima facie, have been developed, by the companies, for the purpose of depositing the same before the Hon'ble Apex Court will not enure to the benefit the company. Hence this contention of the learned Counsel for the EOW also is not sustainable.

22. Lastly, it is contended by the learned counsel for the EOW that in case the accused persons are found guilty then the properties may be confiscated by the criminal court and in that event the purchases of such property will be at the receiving end. Such submission is also not based on two facts. Firstly, these properties have never been seized by the investigating agency and as indicated earlier no application has been filed before the learned District Judge, Khurda at Bhubaneswar under the provisions of the Criminal Law Amendment Ordinance, 1944 for attachment of the properties, so confiscation of the properties at the end of trial does not arise. In the alternative, if it is found that certain persons have been duped by the opposite parties company and its Directors, then money deposited before the Hon'ble Supreme Court may be released by the order of the Hon'ble Supreme Court in their favour. Thus, in the larger interest of the investors as well as of the persons who are complaining of fraudulent transactions, the opposite parties should be allowed to sale by execution and registration of sale deeds in favour of bona fide purchasers in accordance with the

order passed by the learned Addl. Sessions Judge, Bhubaneswar which are impugned in these cases.

23. On the basis of the aforesaid discussion and conclusion arrived at by this Court, it is of the opinion that there is hardly any scope of interfering with the orders passed by the Addl. Sessions Judge, Bhubaneswar in all the revision applications filed before him.

24. Accordingly, all the CRLREVS are dismissed being devoid of any merit.

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**S.K.Mishra, J**

**Orissa High Court, Cuttack**  
**Dated 25<sup>th</sup> February, 2015/A.K. Behera.**

Orissa High Court, Cuttack  
Dated June, 2010/A.K.Behera.

Sd/-

**A.S.Naidu,J.**

**S.C.Parija,J.** I agree.

Sd/-  
**S.C.Parija,J**

True Copy

Orissa High Court, Cuttack  
Dated June, 2010/A.K.Behera.

P.A.

