



A.F.R.

ORISSA HIGH COURT : CUTTACK

WP(C) No. 16117 of 2025

An application under Articles 226 & 227 of the Constitution of
India.

* * *

Himanshu Nayak

.....

Petitioner

-VERSUS-

State of Odisha & Others

.....

Opposite Parties

Counsel appeared for the parties:

For the Petitioner : Mr. Budhiram Das, Advocate.

For the Opposite Parties : Ms. S.Nayak, A.S.C.
(for the O.P. Nos.1 to 3)

P R E S E N T:

**HONOURABLE
MR. JUSTICE ANANDA CHANDRA BEHERA**

Date of Hearing: 10.07.2025 :: Date of Judgment : 25.07.2025



JUDGMENT

ANANDA CHANDRA BEHERA, J.—

1. This writ petition under Articles 226 and 227 of the Constitution of India, 1950 has been filed by the Petitioner against the Opposite Parties praying for directing the District Sub-Registrar, Jagatsinghpur (O.P. No.3) to register the deed for sale vide Annexure-5, which was refused to register by the O.P. No.3 assigning three grounds in Annexure-6.

2. The said three grounds/reasons assigned by the O.P. No.3 for non-registration of the deed for sale (Annexure-5) in Annexure-6 are as follows:-

(i) When, Himanshu Nayak as a registered power of attorney holder of the vendor is executing the deed for sale, but, he (power of attorney holder) has not satisfied that, his principal had not any intention to revoke such power.

(ii) As per the provisions of the Indian Trust Act, 1882 a Trust property can be sold, only if the sale proceeds is required for the Trust and the same shall be used only for the benefit of the trust and the same can only be done when there is clear cut provision in the bye-law of the Trust and the Board of Director of the trust shall pass resolution unanimously for sell of such property. If, there is no unanimity and if there is any legal ambiguity as to the functioning of the Board of Directors without resolving such issue in Court of Law, the resolution cannot be passed for sale of such property.



(iii) When, the property of a public charitable Trust is to be sold, the concurrence of the State Government is required as per Section 57(A) and 57(B) of the OLR Act, 1960, wherein, the collector of the District is the permanent member in representing the State Government in the Board of Director of the Trust, without whose concurrence a resolution cannot be treated as valid for its operation to sell the property of the Trust.

3. The case of the Petitioner in this writ petition is that, Believers Church India is the owner of the properties covered under the deed for sale vide Annexure-5. The consolidation R.o.R. of the properties covered under the said deed for sale (Annexure-5) stands in the name of the Believers Church India Marfat Managing Trust Bishop Dr.Samuel Mathew. The Believers Church India is a private trust and the same has been registered as per The Trust Act vide Annexure-3.

As per the resolution dated 18.03.2022 (Annexure-4), in the meeting of the Board of Trustees of the Believers Church India trust, it was decided for selling of the properties of the trust covered under the deed for sale (Annexure-5) through its Power of Attorney Holder i.e. the Petitioner (Himanshu Nayak).

4. On the basis of such resolution vide Annexure-4, a special Power of Attorney was executed and registered by the Believers



Church India through its Managing trust Bishop Dr.Samuel Mathew in favour of the Petitioner vide registered Power of Attorney No.107 dated 19.03.2022 (Annexure-1) authorizing the Petitioner (Himanshu Nayak) to sell the properties of the Believers Church India in Mouja Nuagaon on behalf of the Believers Church India.

Thereafter, the Believers Church India executed the deed for sale of the properties vide Plots Nos.1279 and 1280 under Khata Nos.58/4 and 528/64 in Mouja Nuagaon through its registered Power of Attorney Holder i.e. the Petitioner Himanshu Nayak in favour of the O.P. Nos.4 to 9 and presented that deed for sale (Annexure-5) before the District Sub-Registrar, Jagatsinghpur (O.P. No.3) for its registration, but, the O.P. No.3 refused to register that deed for sale assigning three grounds as indicated above in Annexure-6 and communicated the same to the Petitioner through letter No.3007 dated 15.07.2024.

5. On being dissatisfied with the aforesaid grounds in Annexure-6 for refusal of registration of the deed for sale vide Annexure-5 by the O.P. No.3, the Petitioner filed this writ petition under Articles 226 and 227 of the Constitution of India praying



for directing the O.P. No.3 to register the deed for sale vide Annexure-5 holding the above grounds/reasons for refusal of registration in Annexure-6 assigned by the O.P. No.3 as illegal.

6. I have already heard from the learned counsel for the Petitioner and the learned Additional Standing Counsel for the O.P. Nos.1 to 3.

7. The legality, sustainability and justifiability of the grounds indicated above in Annexure-6 by the O.P. No.3 for the refusal of registration to the deed for sale (Annexure-5) presented by the Petitioner is required to be discussed and analyzed serially and chronologically one after another hereunder.

8. So far as the first ground for refusal to register the deed for sale by the O.P. No.3 as per Annexure-6 i.e. when, Himanshu Nayak as a registered power of attorney holder of the vendor is executing the deed for sale, but, he (power of attorney holder) has not satisfied that, his principal had not any intention to revoke such poweris concerned;

Sub-Clause 1(a) of Section 33 of The Registration Act provides that, when, a deed for sale is presented for registration on being executed through its Power of Attorney holder, if, the



principal at the time of executing the Power of Attorney resides in any part of India, in which, this Act is for the time being force, a Power of Attorney executed before and authenticated by the registrar or sub-registrar within whose District or Sub-District the principal resides, the registrar or sub-registrar can act upon the same for registration.

9. Here in this matter at hand, as per the Annexure-1 , the Power of Attorney was registered before the Sub-Registrar in the State of Kerala, where, the Managing Trustee of Believers Church India i.e. Bishop Dr. Samuel Mathew is residing. For which, there was no impediment under law to accept the deed for sale vide Annexure-5 presented by the Power of Attorney Holder of the seller i.e. Believers Church India without calling for the principal of that Power of Attorney. Because, the same is fulfilling all the criterias of Sub-Clause 1(a) of Section 33 of The Registration Act, 1908.

10. On this Aspect the propositions of law has already been clarified in the ratio of the following decisions:-

- (i) In a case between **R.Pannerselvam Vrs. A.Subramanian and another** reported in **2009 (3) Civ.L.T. 441 (Madras)** that,



executing the registered sale deed by a power of attorney in favour of a purchaser, there should necessarily be a registered power deed.

(ii) In a case between **Cherryl Ann Joy Vrs. Sub-Registrar, Sub Registrar Office, Udumbanchola** reported in **2019 (I) CCC 171 (Kerala)** that,

SRO can act upon power of attorney, only, if it is registered in terms of provisions mentioned/contained in Registration Act.

(iii) In a case between **Harmohini Sarna and others Vrs. Govt. of NCT of Delhi** reported in **2019 (II) Civ.C.C.(Delhi) 247** that,

power of attorney for registration of property situated outside jurisdiction, principal can register a power of attorney at a place where he resides.

(iv) In a case between **Ravindra Kumar Vrs. State of U.P. and others** reported in **2021 (1) Civ.C.C. (Allahabad) 103 (DB)** in Para No.25 that,

presentation of document for registration. Power of attorney holder can execute a document as agent for someone else and present the document for registration and get it registered.

11. When, the registered deed of Power of Attorney (Annexure-1) in favour of the Petitioner has fulfilled all the criterias of Sub-Clause 1(a) of Section 33 on the basis of its registration before the Sub-Registrar, within whose district the principal i.e. Bishop Dr. Samuel Mathew resides, then at this juncture, in view of the principles of law enunciated in the ratio of the above decisions,



the first ground of refusal of registration as per Annexure-6 by the O.P. No.3 cannot be held as legal.

12. So far as the second ground for refusal of registration of deed for sale i.e. as per the provisions of the Indian Trust Act, 1882 a Trust property can be sold, only if the sale proceeds is required for the Trust and the same shall be used only for the benefit of the trust and the same can only be done when there is clear cut provision in the bye-law of the Trust and the Board of Director of the trust shall pass resolution unanimously for sell of such property. If, there is no unanimity and if there is any legal ambiguity as to the functioning of the Board of Directors without resolving such issue in Court of Law, the resolution cannot be passed for sale of such property is concerned;

when, as per the trust deed and resolution vide Annexure-3 and 4, the deed for sale was executed and presented before the O.P. No.3 for registration, then, without asking the Petitioner for production of the Annexure-3 and 4 and without taking into account the Annexure-3 and 4, the general and omnibus observations of the O.P. No.3 in the ground No.2 of Annexure-6 on the basis of surmises and conjunctures that, if there is no unanimity and if, there is any legal ambiguity as to the



functioning of the Board of Directors without resolving such issue in Court of law, the resolution for sale cannot be passed is unsustainable under law. Because, the said observations of the O.P. No.3 is imaginary in nature.

13. So far as the third ground for refusal of registration of deed for sale i.e. when, the property of a public charitable Trust is to be sold, the concurrence of the State Government is required as per Section 57(A) and 57(B) of the OLR Act, 1960, wherein, the collector of the District is the permanent member in representing the State Government in the Board of Director of the Trust, without whose concurrence a resolution cannot be treated as valid for its operation to sell the property of the Trust is concerned;

It is the settled propositions of law that,

When, the trust deed explicitly empowers the trustees to sell the trust property through a resolution by the Board of Trustees, in that case, the trust properties can be sold without the permission of the Court as well as the Government.

14. On this Aspect the propositions of law has already been clarified in the ratio of the following decision:-

- (i) In a case between **Asstt. Commissioner, Devasthan Deptt., Udaipur Vrs. Balwant Singh and others** reported in **1997 Supreme (Raj) 971** that,



when the instrument itself provides that, the trustees could sell the property, then, permission from any authority to sell the same is not required.

15. It reveals from Annexure-4 that, resolution was passed by the Board of Trustees for selling the properties of the trust i.e. the Believer Church India covered under the deed for sale vide Annexure-5.

16. Therefore, by applying the principles of law enunciated in the ratio of the aforesaid decision, it is held that, the above ground No.3 of Annexure-6 by the O.P. No.3 for the refusal to register the deed for sale vide Annexure-5 is also not legal under law.

17. As per the discussions and observations made above, none of the grounds out of three indicated in Annexure-6 by the District Sub-Registrar, Jagatsinghpur (O.P. No.3) for the refusal to register the deed for sale vide Annexure-5 are sustainable under law. So, there is no impediment under law to allow this writ petition filed by the Petitioner.

For which, the writ petition filed by the Petitioner is to be allowed.



18. In result, the writ petition filed by the Petitioner is allowed on contest.

19. The Annexure-6 issued by the O.P. No.3 stating the grounds of refusal to register the deed for sale (Annexure-5) is quashed.

20. The District Sub-Registrar, Jagatsinghpur (O.P. No.3) is directed to receive the deed for sale (Annexure-5), if, presented by the Petitioner for its registration annexing the certified copy of this judgment and to act upon the same for its registration as per the Registration Act, 1908 and the Orissa Registration Rules, 1988 and on its registration, the O.P. No.3 shall return that registered sale deed to the Petitioner within three days complying all the rules and formalities of Section 100 of the Orissa Registration Rules, 1988 and Notification No.2915 dated 02.08.2017 issued by IGR of Odisha.

21. As such, the writ petition is disposed of finally.

(ANANDA CHANDRA BEHERA)
JUDGE

Signature Not Verified
High Court of Orissa, Cuttack
Digitally Signed 25.07.2025// Binayak Sahoo
Signed by: BINAYAK SAHOO
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