BY FAX

GOVERNMENT OF ODISHA
REVENUE & DISASTER MANAGEMENT DEPARTMENT
*****

No. Regn- 260/2012- 54720 **/R&DM, dated** 18.12.2012

From

Dr. Taradatt, IAS
Principal Secretary to Government

To

All Deputy IGRs / District Sub- Registrars/Sub- Registrars.

Sub: Registration of cancellation deed of earlier registered sale deed and maintenance of the certificate of cancellation thereon in the Registration Offices.

The undersigned is directed to invite a reference to the letter No. 3700/ IGR, dated 23.05.2011 issued by the IGR, Odisha, Cuttack on the subject cited above in which instruction was issued to the Registering Authorities to exercise their inherent power of registering a cancellation deed by following the natural justice in case of committing fraud by impersonation on registration and to commence prosecution against the erring person/ s u/s 83 of the Registration Act, 1908 pursuant to the principle of law decided by the Andhra Pradesh High Court in the case of Yanala Malleshwari- Vrs- Smt. Ananthula Sayamma reported in AIR 2007 AP- 57.

To obviate the possibility of transaction on fake identification (i.e. impersonation), the registration should be allowed only when the pattadar himself presents the document with sufficient proof for registration. The documents declared void are to be maintained in the register after issuing necessary certificate of cancellation on the face of the same deed, which can be easily traced out during issuance of encumbrance certificate and certified copies. Immediate FIR against the persons who have committed fraud/ impersonation should be lodged in the Police Station by the Registering Officer to avoid such type of nuisance in future and to protect the general public from harassment.

You are, therefore, requested to strictly adhere the above instruction very carefully in order to avoid fraud/ impersonation.

Yours faithfully,

18.12.12
Principal Secretary to Government.

Memo No. 54721 /R&DM, dated 18.12.2012

Copy forwarded to the IGR, Odisha, Cuttack/ Joint IGR, Odisha, Cuttack for information and immediate necessary action.

18.12.12
Principal Secretary to Government.

BOARD OF REVENUE : ORISSA: CUTTACK

(Registration Wing)

No. 3700 /IGR., dated 23-05-2011

IX-84/11

From:

Shri Sudarsan Nayak, IAS,
Inspector General of Registration, Orissa.

To

All the Deputy IGRs/DSRs/SRs.

Sub: Registration of cancellation deed of earlier registered sale deed.

Sir,

I am to say that there is no specific provision in the Registration Act., 1908 empowering the Registering Authority to cancel the sale deed earlier registered even if such registration was obtained by fraud and manipulation. All along we have been taking the plea that the Registering Authority cannot look into the validity of the documents before registering the same and the competent civil court can only annul such fraudulent transaction and thereafter only the cancellation of registered sale deed can be processed by the registering officer.

2. The full bench of the Andhra Pradesh High Court in the case of Yanala Malleshwari-Vrs.-Smt. Ananthula Sayamma reported in AIR 2007 AP-57 has answered the following question as detailed below:-

Question:- Whether a person can nullify the sale by executing and registering a cancellation deed and whether the District Registrar or Sub-Registrar is bound to refuse registration when a cancellation deed is presented ?

Answer:- "In the considered opinion of this Court if a person sells away the property belonging to other, it would certainly be fraud on the statute. It would be adding insult to injury, If such person is asked to go to civil Court and get the subsequent sale deed cancelled or seek a declaration. Be it also noted that under common law, as discussed supra, the title of a person remains intact even if a stranger coveys that title to another stranger, which is ineffective."

"The person, who has ex facie right whether such right is registered or not can always approach the registering authority, with a

request to cancel a sale deed, which was registered earlier by such registering authority by showing that subsequent registration was obtained by fraud by a person who is not entitled to transfer the property or that such transfer was registered by playing fraud on the owner or on the stranger. In the present statutory dispensation, namely, Transfer of Property Act., Contract Act, Specific Relief Act and Registration Act, the Court does not see any prohibition operating on the exercise of inherent power by the registering authority to cancel the sale deed earlier registered, which is likely to cause prejudice to the true owner as well as to the entire public at large."

3. In view of the aforesaid principle of law decided by the Andhra Pradesh High Court analyzing various Supreme Court judgments there is no bar for the registering authority to exercise the inherent power of registering a cancellation deed by following the principles of natural justice. At the same time the registering authority may also commence prosecution against the person who has committed the fraud u/s. 83 of the Registration Act, 1908. Thus the Registering Officer has power to accept and register a cancellation deed cancelling the earlier sale deed. But this power has to be exercised very carefully on appropriate cases. It is made clear that the Registering Officer shall not suomoto cancel the deed but can register a cancellation deed presented by the true owner but should suomoto commence prosecution.

Yours faithfully,

23/5/11

Inspector General of Registration,
Orissa.

Memo No. 3701 /IGR., dated 23.05.2011

Copy forwarded to the Member, Board of Revenue, Orissa, Cuttack/Commissioner-cum-Secretary to Government, Revenue & DM Department, Government of Orissa, Bhubaneswar for information and necessary action.

Inspector General of Registration,
Orissa.

23/5/11