
(2009) 02 OHC CK 0022

In the Orissa High Court

Akshaya Kumar Bala and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2009) 107 CLT 227 : (2009) 1 OLR 735 Supp

Hon'ble Judges : L. Mahapatra, J;B.N. Mahapatra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—The same Petitioners have filed these five Writ Petitions challenging the Orders Dated 27.02.1999 (Annexure-1) passed in Revision Case Nos. 6, 13, 5, 14 and 8 of 1985 under the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as "OGLS Act") by which the Opposite Party No. 3-Additional District Magistrate, Cuttack (hereinafter referred to as "Revisional Authority") cancelled the original lease granted in favour of Opposite Party No. 5 whereby the sale deeds executed by said Opposite Party No. 5 in favour of one Chinmayee Bala (wife of Petitioner No. 1 and mother of Petitioners 2 to 6) became void on the ground that such action of Opposite Party No. 3 is wholly illegal and violative of the conditions laid down in the approved lease principles of the Government Circulars dated 20.10.1972 and 06.04.1974.

In all these Writ Petitions since the issues involved are identical, with the consent of Learned Counsel for the parties, they are heard together and disposed of by this common Judgment.

2. Shorn of unnecessary details, the facts and circumstances giving rise to these Writ Petitions are that Opposite Party No. 5 along with others had applied for lease of Government land in the year 1974, as some of them were landless persons or the persons having less than five acres of land as provided in the approved lease principles of the government for settlement of government lands

vide Circular No. 48597 dated 26.11.1961. Subsequent to the said Circular of 1961, the Government had issued two more Circulars, i.e., Circular No. 60792GE(GL) No. 18699GE(GL-II) 358/72-R dated 20.10.1972 and Circular 12/74-R dated 06.04.1974 in which certain amendments were made for grant of lease. After considering the lease applications of the applicants the Tahasildar, Athagarh (O.P. No. 4) granted lease of land in favour of Opposite Party No. 5. Before granting such lease, the Opposite Party No. 4 had duly invited objections on 18.02.1975. After expiry of proclamation period, since no objection was received, Opposite Party No. 4 sanctioned the said lease in favour of Opposite Party No. 5 under Lease Case No. 815/1974 of Athagarh Tahasil in the district of Cuttack. The said land was mutated in the name of Opposite Party No. 5 and the R.O.R. was accordingly issued in the name of Opposite Party No. 5. The rent of the land was being paid by Opposite Party No. 5 up to 1981-82. Opposite Party No. 5 due to financial hardship sold the said land to one Chinmayee Bala, wife of Akshaya Kumar Bala (Petitioner No. 1). In the year 1985, Opposite Party No. 3 initiated suo motu revision cases and cancelled the said lease u/s 7A(3) of the OGLS Act. In said suo motu revision proceedings, Petitioners were not intimated/noticed. The said Chinmayee Bala (wife of Petitioner No. 1) died in the year 1985 for which Petitioner Nos. 1 to 6 being legal heirs and successors-in-interest filed Writ Petitions bearing O.J.C. Nos. 418/1997, 2385/1998; 6427/1997, 429 of 1997 & 419 of 1997 challenging the orders of Opposite Party No. 3. This Court after hearing all the parties disposed of the Writ Petitions by setting aside the orders passed by Opposite Party No. 3 with direction to the Petitioners to appear before the Revisional Authority. Pursuant to orders of this Court, Petitioners appeared before Opposite Party No. 3 on different dates through their advocate and produced certified copy of the order passed by this Court. The Revisional Authority on 27.02.1999 finally rejected the claim of the Petitioners in respective Revision Cases upholding its earlier view. Hence, these Writ Petitions.

3. Mr. P.K. Nayak, Learned Counsel for the Petitioners, submitted that the delay in filing the Writ Petitions was beyond the control of the Petitioners and the same cannot be attributed to the Petitioners. Pursuant to this Court's order, Petitioners appeared before the Revisional Authority through their advocate, who was authorized to look after their case and participate in the day-to-day proceedings of the case on their behalf as they were residing outside because of their employment. The said conducting lawyer did not inform the Petitioners about the disposal of their revision cases on 27.02.1999. The Petitioners were under impression that the proceedings were continuing even though earlier it was finally disposed of. Only on 17.09.2007, Petitioners came to know from the office of the Revisional Authority that their cases had already been dismissed on 27.02.1999. Then on the same day they applied for certified copy of the order and obtained the copy of the order on 29.09.2007 and, after collecting necessary documents, they filed the Writ Petition on 20.11.2007. Therefore, there was no intentional delay/laches on the part of the Petitioners.

In support of his contention, Learned Counsel relied on a decision of the Hon'ble

Supreme Court in State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, and a decision of this Court in Shri Lalit Mohan Meher Vs. Revenue Divisional Commissioner, Northern Division and Others, .

It was further argued that the Petitioners are bona fide purchasers of leasehold land, which was granted in favour of Opposite Party No. 5 after fulfilling all legal formalities as required under the approved lease principles of the Government. The Opposite Party No. 5- original lessee sold the said land to one Chinmayee Bala, wife of Petitioner No. 1 and mother of Petitioner Nos. 2 to 6 after completion of five years, which was in conformity with the conditions laid down in the approved lease principles (Circulars dated 20.10.1972 and 06.04.1974) and the Sub-Registrar of Athagarh, after being satisfied about fulfillment of all the conditions and the principles, had registered the sale deed. He further submitted that the land once leased out in favour of any person under the approved lease principles cannot be set aside by exercising jurisdiction u/s 7A(3) of the OGLS Act. In support of his contention, Learned Counsel relied upon a decision of this Court in Chandra Kala Padi, Ganesh Chandra alias Kumar Padi, Srinivas Padhi, Krushna Padhi and after him Dukhi Padhi and Others Vs. State of Orissa and Others, .

4. Mr. D.R. Mohapatra, Learned Counsel appearing for the State, submitted that there was delay of about more than eight and half years in filing these Writ Petitions and, therefore, such inordinate delay should not be condoned. On this ground alone, the Writ Petitioners are liable to be dismissed. He further submitted that the Revisional Authority has ample power u/s 7A(3) of the OGLS Act to cancel such lease granted to any person if the same was obtained by fraud, misrepresentation etc. Revisional Authority has not committed any error in cancelling the registered sale deeds executed by Opposite Party No. 5 in favour of the Petitioners.

5. On the above rival contentions, following questions fall for consideration by this Court.

(i) Whether, on the facts and circumstances of the case, the delay of more than eight and half years in presenting the Writ Petition challenging the impugned order should be condoned?

(ii) Whether the revisional authority is competent to cancel a lease granted in favour of a landless person under approved lease principles by exercising power u/s 7A(3) of the OGLS Act?

6. Since Mr. Mohapatra, Learned State Counsel raised the preliminary objection on the ground of delay/laches, the Same should be gone into at the outset.

7. The question of delay in filing the Writ Petition was considered by the Hon''ble Apex Court in Smt. Sudama Devi Vs. Commissioner and Others, , wherein it has been observed as under:

There is no period of limitation prescribed by any law for filing a Writ Petition

under Article 226 of the Constitution. It is, in fact, doubtful whether any such period of limitation can be prescribed by law. In any event, one thing is clear and beyond doubt that no such period of limitation can be laid down either under the rules made by the High Court or by practice. In case, it would have to be decided on the facts and circumstances whether the Petitioner is guilty of laches and that would have to be done without taking into account any specific period as period of limitation. There may be cases where even short delay may be fatal while there may be cases where even a long delay may not be evidence of laches on the part of the Petitioner.

Similarly, in *State of U.P. and Others Vs. Raj Bahadur Singh and Another*, ; the Hon'ble Apex Court held that there is no time limit for filing Writ Petition. All that the Court has to see is whether the laches on the part of the Petitioner are such as to disentitle him to the relief claimed by him.

In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , the Hon'ble Supreme Court held as follows:

...High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner in filing a Writ Petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a Writ Petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In *M.S. Mudhol and Another Vs. S.D. Halegkar and Others*, , the Hon'ble Supreme Court observed that the Management of an aided Private Higher Secondary School appointed a person having M.A. Third Division and M.Ed. Second Division, as Principal with the approval of the Director, Education. After he completed nine years service, his appointment was challenged in a Writ Petition for quo warranto, on the ground, that he did not pass M.A. Second Division and as such, he was not qualified as M.Ed. Which is not equivalent to M.A. degree. The Supreme Court dismissed the petition on the ground of long delay and laches on the part of the Petitioner.

In *M/s. Samant and Another Vs. Bombay Stock Exchange and Others*, , the Hon'ble Supreme Court held that the executive director of Bombay Stock Exchange initiated action against a member of the Stock Exchange. The Stock

Exchange after following the due procedure declared the member as defaulter under bye-law 316 framed under Securities Contracts (Regulation) Act, 1956. The membership of the defaulted member being vacant, was sold out to a third person. The defaulter member filed a Writ Petition after the delay of more than three years. The Supreme Court held that the petition was rightly dismissed by High Court as it was barred by laches.

In *Kuldip Chand Vs. Union of India and others*, , the Hon''ble Supreme Court held that inordinate delay or laches is by itself a ground to refuse relief to the Petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief.

In *S.A. Rasheed Vs. Director of Mines and Geology and another*, , the Hon''ble Supreme Court held that the State of Karnataka granted lease in 1981 for ten years to a private person to quarry Mines for pink granite - a minor mineral under the Mines and Minerals (Regulation and Development) Act, 1957 read with Karnataka Minor Minerals Concession Rules, 1969. A new Rule 3A was introduced in the rules with effect from 2.7.1981 which prohibited granting of lease to private persons in respect of pink granite a minor mineral. The State did not execute the lease deed. The lessee filed a revision petition and forgot about it. He did not hear back from the State. He filed a Writ Petition in the High Court after eight long years. The High Court did not find his explanation for the delay as satisfactory as he did not submit any document to substantiate the stand that he had ever pursued the revision. The Writ Petition was dismissed on the ground of laches and unexplained delay.

The Hon''ble Supreme Court in *The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others*, , held that the High Court should have dismissed the Writ Petition on the ground of delay and laches.

8. Inordinate delay or laches is by itself a ground to refuse relief to the Petitioners irrespective of merit of their claim. Delay or laches is one of the factors, which should be borne in mind while exercising discretionary power under Article 226 of the Constitution of India.

9. Keeping in view the aforesaid settled proposition of law, we have to examine the case of the Petitioners. Petitioners filed these Writ Petitions on 20.11.2007 challenging the validity and legality of the Order Dated 27.2.1999. Thus, the Petitioners approached this Court after more than eight and half years from the date of passing of the impugned order. The reason given by the Petitioners in the Writ Petition explaining the delay is that they had entrusted the matter to an advocate, who did not intimate the Petitioners regarding the Order Dated 27.2.1999. On the other hand, from time to time he was giving assurance to the Petitioners that they would be intimated about the fate of the case in due time. Petitioners had no mala fide intention and the delay was beyond their control.

Pursuant to this Court's order, Petitioners appeared before the Revisional Authority on 16.04.1998 through their advocate, who was authorized to look after, and participate in the day-to-day proceedings of the case on behalf of the Petitioners as they were residing outside due to their place of employment. It was also mutually agreed that the advocate would intimate the day-to-day progress of the said case to the Petitioners. Every time the Petitioners were assured not to be worried. The Petitioners were under impression that the proceeding was still continuing even though it was finally disposed of much earlier. Only on 17.09.2007 Petitioners came to know from the office of the Revisional Authority that their cases were dismissed on 27.02.1999. Then they immediately applied for certified copy of the order on the same day and obtained the certified copy of the order on 29.09.2007. and after collecting necessary documents, they presented the Writ Petitions on 20.11.2007 before this Court.

The explanation of the Petitioners does not appear to be believable and reasonable for the reason that the Petitioners have never disclosed the name of their lawyer, who was engaged by them to look after and conduct the revision cases before the revisional authority. They have also not stated in the Writ Petitions as to what steps they have taken from time to time to know about the fate of their revision cases pending before the revisional authority. Even though they have stated that all the Petitioners were working outside due to their place of employment, they have not given addresses of their places of employment and in which post each of them were employed. No evidence in support of the contention that it was mutually agreed that the advocate would intimate the day-to-day progress to the Petitioners and every time they were assured not to be worried was brought to the notice of this Court. In absence of all these relevant facts, reasons given by the Petitioners for causing delay of more than eight and half years in filing these Writ Petitions cannot be accepted. Moreover, valuable rights were being adjudicated by the Revisional Authorities involving the Petitioners and, therefore, Petitioners should not have waited for more than eight and half years relying on their Advocate without making any effort to find out the outcome of those revisions. It is a case of sheer laches on the part of the Petitioners. Therefore, we are of the considered view that the Writ Petitions are not maintainable.

The decision of Hon'ble Apex Court in Kameswar Prasad Singh (Supra) is of no help to the Petitioners as in that case, there was delay of 679 days only in filing SLP and sufficient cause was shown by the Petitioners for such delay. The decision of this Court in Lalit Mohan Meher (supra) will also not help the Petitioners as there was delay of five days only in preferring appeal and the issue of limitation was considered by this Court with reference to Section 5 of the Limitation Act, 1963.

10. Moreover, in the cases at hand, no interim order was passed. There is nothing on the record to show that the Petitioners were in possession of the lands in questions. The peculiarity of this case is that the late wife /mother of the

Petitioners had purchased the lands in question from the aforesaid five landless persons and those landless persons (the original lessees) are not challenging the impugned order of cancellation of lease. We are very much doubtful regarding the locus standi of the Petitioners to challenge the revisional order. Since we are not inclined to entertain the Writ Petition's on the preliminary ground of delay / laches, there is no need to adjudicate the other issue involved in the present Writ Petitions, which may amount to mere academic exercise.

In view of the above, the Writ Petitions are dismissed, no order as to costs.

L. Mohapatra, J.

I agree.