
(1994) 05 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 2520 of 1990

Anugraha Narayan Tiwari

APPELLANT

Vs

Tahasildar, Nawapara and Another

RESPONDENT

Date of Decision : 02-05-1994

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 7
Constitution of India, 1950 — Article 226
Orissa Prevention of Land Encroachment Act, 1972 — Section 4, 6

Citation : AIR 1994 Ori 310 : (1994) 78 CLT 467

Hon'ble Judges : S.K. Mohanty, J; L. Rath, J

Bench : Division Bench

Advocate : G.S. Rath, for the Appellant; D. Das, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—The petitioner against whom two encroachment proceedings, E.C. Nos. 10 and 14 of 1968 were initiated, has come before the Court for declaration of the confirmation of his rights to the lands under orders passed on 12-11-1970 and quashing of the orders passed on 30-6-1978 as also the eviction proceedings initiated and the ultimate eviction pursuant to the orders dated 14-8-1985, compensation in terms of law and quashing of the certificate proceedings initiated against him and the requisitions in Certificate Case No. 176 of 1980 and Nos. 47 and 48 of 1986 and the notices, Annexures 1, 2 and 3 issued in those cases. Though the petitioner in the petition has mixed up the facts relating to the two encroachment cases, yet with reference to the ordersheet of Encroachment Case No. 10 of 1968 filed an Annexure 4, the averments in the petition and the records of the lower Court made available by the learned Additional Government Advocate, the facts emerge as follows. Both the encroachment cases were initiated under the Orissa Prevention of Land Encroachment Act, 1954 (hereinafter referred to as "1954 Act"), the first one for 8.61 acres and the second for 50.57 acres. The cases were initiated on 12-10-1968 by the Tahasildar as he found, on verification of the record-of-rights, the petitioner

respectively is encroaching 8.61 acres and 50.71 acres of Abadajogya Anabadi land. The Tahsildar directed issue of notices to him u/s 7 of the 1954 Act to show cause as to why proceedings against him under Sections 3, 5 and 6 should not be proceeded with. On 27-4-1970 the petitioner was represented through his brother Gopal Narayan Tiwari and filed a show cause admitting the encroachment and praying to settle the lands on payment of back rent and salami. On 12-11-1970 order was passed in Encroachment Case No. 10 of 1968, when the petitioner was present, that he admitted the unauthorised occupation of 8.61 acres, as detailed in the order, since 1944 and that from enquiry it was ascertained from the villagers that the land was not used for communal purpose nor was it required for any Government work. The Additional Tahasildar as such reached the satisfaction that the encroachment was unobjectionable that it was prior to 13-9-1961 and that the land could be settled with him on payment of back rent and salami but no penalty was needed to be imposed in accordance with the principles laid down in Government in Revenue and Excise Department G.O. No. 14960(6) dated 4-3-1964. He was assessed to back rent of Rs. 276.75 as per the calculation sheet attached and direction was made to intimate the Revenue Inspector of the demand in Form-J and enter in the Register No. 2. Similarly in Encroachment Case No. 14 of 1968 order was passed in presence of the parties that the encroachers (the present petitioners, Kailas Narayan Tiwari, Gopal Narayan Tiwari and Prema Narayan Tiwari) had admitted the unauthorised occupation of 50.71 acres of Abadajogya Anabadi land since the year 1938. Similar satisfaction of the Additional Tahasildar was recorded of the land being not used for communal purpose nor was it required for any Government work and that the encroachment was unobjectionable and was also prior to 13-9-1961. The back rent was assessed at Rs. 1991.22. The Revenue Inspector was directed to be intimated in Form-J. On 1-12-1971 the Additional Tahasildar recorded the orders as follows :

Encroachment Case No. 10/68

"1-12-1971 "J" Form returned back from Revenue Inspector, Khariar with the endorsement on the body of it that the demand has been taken to his account. The case is converted to lease case. Ask the party to pay salami of Rs. 861.00 (Rupees eight hundred sixtyone) only, within a month from the date of receipt of notice to settle the land in favour of the encroacher."

Encroachment Case No. 14/68

"1-12-1971 "J" Form returned back from Revenue Inspector, Khariar with the endorsement on the body of it that the demand has been taken to his account. The case is converted to lease case. Ask the party to pay salami of Rs. 5071/- (Five thousand seventy one) only within a month from the date of receipt of the notice to settle the land in favour of the encroacher."

The cases were thereafter put up on 3-4-1975, 22-8-1975, 25-8-1975, 25-9-1975 and 18-8-1977, on each date directing notice to the party to appear

and adjourning the cases to successive dates. On 25-9-1975 order was passed for tagging the E.C. No. 10/68 with E.C. No. 11/68 for further action. It is not known as to what was E.C. No. 11/68, such fact having not been explained by the petitioner, but it appears that probably "E.C. No. 11/68" is a mistake for E.C. No. 14/68. All these orders were passed by the Additional Tahasildar. On 18-8-1977 the matters were put up before the Tahasildar who recorded that the order of 25-9-1975 had not been complied with. He asked the Lease Amin to demarcate the lands in presence of the encroacher and submit a report by 10-9-1977. The matters did not proceed thereafter and were put up before the Tahasildar on 30-6-1978 who considered that day the report submitted by the Court Amin on 9-3-1978. The Tahasildar passed orders that since the encroachments were recorded in the record-of rights, no further verification was necessary and that though the cases had been previously treated as lease cases, yet it was found that the encroacher was not a landless person, he having 28.34 acres of land in Khata No. 4 of village Thelkodaberi and as per the lease principles the land could not be settled. He thus converted the cases to encroachment cases and directed issue of notice under Sections 4 and 6 of the Orissa Prevention of Land Encroachment Act, 1972 (hereinafter referred to as "1972" Act"). This direction could be only under the 1972 Act since the 1954 Act had been repealed and the 1972 Act had come into force. The cases were thereafter posted from date to date and because of the non-appearance of the encroacher fresh notices were directed to be issued u/s 9 of the 1972 Act and ultimately on 30-4-1985 Gopal Narayan Tiwari, the brother of the present petitioner appeared on behalf of the petitioner and requested for time. The case was adjourned to 22-5-1985. On the adjourned date the petitioner did not appear for which the Tahasildar concluded of he having nothing to say in the matter. He calculated further assessment and penalty on the land and issued intimation to the Revenue Inspector for realisation and directed the petitioner to vacate the lands within thirty days. The service returns being got back on 28-6-1985 to which date the cases had been adjourned, the matters were directed to be put up on 14-8-1985. On that day the notices u/s 7(1) of the 1972 Act were found to be back and to have been served upon the petitioner on 3-7-1985. Orders were passed summarily evicting him from the lands and the Revenue Inspector, Khariar was directed to take over possession. On 5-11-1985 the report of the Revenue Inspector intimating possession to have been taken over was recoded. On 20-2-1986 the record-of-rights was corrected and signed. Annexure 1, 2 and 3 are the certificate cases against the petitioner for realisation of the assessed amount in respect of the two encroachment cases.

2. In assailing the orders of eviction and the certificate proceedings, Mr. Rath, the learned counsel for the petitioner has contended that since orders had been passed to settle the lands with the petitioner and the cases had been converted to lease cases, it was not within the competence of the successor Tahasildar to convert the cases to encroachment cases later on. His second submission is that the petitioner had become a tenant by acceptance of rent by the State and hence

there could not be thereafter encroachment cases against him in support of which proposition reliance has been placed on ILR (1961) Cut 595 (Basiruddin v. State of Orissa). The third submission is that the proceedings to settle the lands with the petitioner could only have been made under the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as "the O.G.L.S. Act") , and those being statutory proceedings, the proceedings under the 1972 Act for eviction of the petitioner from the very same lands were misconceived. The next question urged is that since the petitioner's possession in respect of the lands was for more than 30 years even by the time the encroachment cases were initiated first, his title had been perfected in respect of the lands and he could not be evicted therefrom in the proceedings under the 1972 Act. In the alternative his argument is that since it was the Government policy to settle all encroachments made prior to 13-9-1961 with the encroachers and such policy was reiterated in the notification of the Government on 24-9-1970 and since the orders to grant lease to the petitioner of the land were passed on 12-11-1970, those were valid orders settling the lands which were not liable to be reopened.

3. Refuting the submissions urged, the arguments advanced by the learned Additional Government Advocate are that the petition is liable to be dismissed on account of gross delay and laches as the orders evicting the petitioner were passed on 14-8-1985 in pursuance of which the possession has also been taken over and the writ petition has been filed in July, 1990 without there being explanation for the delay. On merits it is contended that the petitioner had never become tenant under the State and had never perfected title by adverse possession.

4. The argument advanced on behalf of the State regarding delay and laches of the petitioner has substantial force. The orders of eviction having been passed on 14-8-1985, those were to have been challenged within a reasonable time. Absolutely no explanation has been furnished in the petition for ap-proaching the Court after five years. There has been successive pronouncements both of the Apex Court and different High Courts of the country of refusing to entertain petitions under Articles 226 and 227 of the Constitution of India when the cause of action assailed has already become stale. In the present case not only the orders of eviction were passed but also the petitioner was evicted. The submission urged by Mr. Rath that the petitioner had no notice does not inspire confidence as his brother Gopal Narayan Tiwari was appearing on his behalf throughout both in the encroachment cases and the certificate cases. The writ petition hence is liable to be rejected exclusively on such ground alone.

5. Even so it is also worthwhile to discuss the submissions advanced by Mr. Rath since even on consideration of those I have not been able to find any force in them. Besides, the petition itself is also defective since even though the proceedings of two encroachment cases (Encroachment Cases Nos. 10 and 14 of 1968) and proceedings of three certificate cases (Certificate Cases Nos. 176/80 and 47 and 48 of 1986) are purported to be assailed, yet only one petition has

been filed which is not as such entertainable. Even the ordersheet of the Encroachment Case No. 14 of 1968 has not been filed. The only relief sought in the prayer, so far as eviction is concerned, is to quash Annexure-4 which only refers to Encroachment Case No. 10 of 1968 and nothing has been stated regarding Encroachment Case No. 14 of 1968. Again so far as the certificate cases are concerned, none of the ordersheets of the three cases has been filed though of course their quashing has been sought for only on the basis that they relate to encroachment cases which being not, according to the petitioner, maintainable, the certificate cases also do not lie. The position is untenable since the certificate cases relate to the assessment and penalty imposed under the provisions of the 1972 Act and the petitioner has never challenged the assessment and the penalty imposed but it is his very cases that since the encroachment proceedings were converted to lease cases, those could not subsequently be converted again as encroachment cases. The orders passed by the Certificate Officer rejecting the petitioner's objection u/s 8 of the Orissa Public Demand Recovery Act denying his liability do not appear to have been challenged in appeal or other forums and thus the petitioner has not exhausted the statutory remedies available to him under that Act. All these are serious infirmities which strike at the root of the present petition which seeks to invoke the extraordinary jurisdiction of this Court. But it being essentially in the nature of an equity jurisdiction, the petitioner becomes disentitled to it because of his having not complied with the provisions of the statute.

6. Now I may come to the merits. Before the submissions urged by Mr, Rath are considered, it will be worthwhile to notice few circulars of the Government relating to settlement of encroached lands as also some statutory provisions relating thereto. The first in point of time was the 1954 Act which made provision for eviction of an encroacher from property of Government. There was no provision for settlement of encroached land in the 1954 Act, but resorting to eviction was, u/s 6 thereof, discretionary with the Collector. A decision, commonly known as the "Approved Lease Principles," was taken by the Government on 13-9-1961, communicated in Letter No. 48597-R dated 26-10-1961, for settlement of Government lands. In it decision was taken that all encroachments up to 1-6-1961 which had not till then been removed were to be considered together in one batch under the rules and disposed of. No encroachment or settlement was to be allowed in reserved areas and all encroachments in such areas were to be removed as objectionable. All other encroachments which were unobjectionable were directed to be settled with the encroacher irrespective of the area, at flat rates mentioned therein. Under Clause 12 of the Approved Lease Principles the authority to grant the lease was the Tahasildar of the area and where there was no Tahasildar, the Sub-Divisional Officer was the designated authority competent to decide settlement of land and appeal from every original decision in a lease case was to lie to the Sub-Divisional Officer, if it was passed by the Tahasildar, or to the Additional District Magistrate, if it was passed by the Sub-Divisional Officer, with further right of

revision given in both cases to the Revenue Divisional Commissioner. At this time the O.G.L.S. Act, 1962 became effectively effective from 1-1-1965 with its other sections apart from Section 1 coming into force from that date. The O.G.L.S. Act made provisions for reservation and settlement of Government lands. Next relevant is the Letter No. 61562-G.E.(G1)-24/62-R dated 23-12-62 in which inter alia it was clarified, with reference to paragraph 4 of the Approved Lease Principles, that the officer to collect the salami was the Tahasildar and where there was no Gazetted Tahasildar, the Sub-Divisional Officer was to do the same. Next relevant is the letter No. 14960(6)-Enc.-33/63 dated 4-3-1964 of the Government of Orissa, Revenue and Excise Department, which was referred to in the order of 12-11-1970 and copy of which has been furnished by the learned Additional Government (Pleader). In the letter the decision of the Government communicated was that the prescription of a higher rate of salami in the Approved Lease Principles was with the intention of including an element of penalty for the unauthorised occupation. It was stressed that imposition of penalty was a matter of discretion of the officer exercising powers under the 1954 Act and that the power was to be judiciously exercised for which the Government desired that the penalty to be levied and salami proposed to be realised taken together should not exceed the amount specified in the earlier paragraph. It was stated that the best course was not to levy any penalty and to realise salami at full rates subject, of course, to other principles of settlement and levy of salami like recovery in instalments, etc. Next in relevance is the Letter No. 28343/G.F.(G.L.)-233/68-R dt. 4th/5th June, 1968 in which it was clarified that in view of the fact that in ex-State areas during ex-Darbar period no salami was charged for settlement of encroached land, the Government had decided that where the encroachments related to a period prior to 26-1-1950 and were unobjectionable and settleable according to the instructions contained in paragraph 3 of the G.O. No. 30919-R dated 25-5-1966 and the Approved Lease Principles contained in G.O. No. 48597-R dated 26-10-1961, no premium should be charged and that annual rents on such encroachments to be settled should be charged at the rates prevailing for similar lands in the vicinity with effect from 26-1-1950 and not from the date of encroachment. But the encroachments found to have been made after 26-1-1950 were to be settled in accordance with the terms and conditions as contained in the Approved Lease Principles. Next relevant is the letter No. 29995-GE(GI) 23/70-R, dated 1-6-1970 from the Government of Orissa to the Board of Revenue in which the Government took note of the fact that it had been brought to the notice of the Government that the principles approved by it for settlement of unobjectionable encroachments led to a spate of fresh encroachments in some areas by rich and influential persons with the object of taking advantage of those principles for settlement of the lands encroached by them in their favour and the Government had therefore directed in letter No. 52170-R dated 18-11-1961 that no encroachment after 13-9-1961 was to be encouraged and if any encroachment occurred thereafter, the encroached land was not to be settled irrespective of whether the encroacher belonged to any tribe, caste or landless class. Though that was the decision

taken on 18-11-1961 yet finding that pursuant to the order the Revenue Officers were not considering settlement of any encroachment occurring after 13-9-1961 though they might be unobjectionable in nature which in fact had caused hardship to landless persons who had no means of livelihood other than agriculture, the Government clarified that each case of encroachment on unobjectionable land made by landless Adivasi or Harijan or other landless person who had taken agriculture as a means of livelihood should be decided on merit and settlement might be permitted up to the extent of five acres in an individual case in accordance with the Approved Lease Principles and that unobjectionable encroachment might be defined as an encroachment on lands suitable for agricultural and not already reserved or required immediately for development, communal and homestead purposes. It was further clarified that any area encroached in excess five acres should be restored to Government after eviction for settlement with other deserving landless persons and that very strict proof of continuous encroachment like payment of penalty and assessment over some years should be demanded before settlement was sanctioned. This Government letter made it clear that any encroachment made after 13-9-1961 was not to be settled except with landless Adivasi or Harijan or other landless person and that too, only up to the extent of five acres and very strict proof of continuous encroachment like payment of penalty and assessment over some years was to be demanded before settlement was sanctioned. Next in relevance is letter No. 55226-G.E.(GL)-8/70-R dated 24-9-1970 from the Government of Orissa in Revenue Department to the Board of Revenue again with reference to the Approved Lease Principles of 26-10-1961 prescribing, in view of substantial increase in the value of land both in rural and urban areas, higher premiums for settlement. The last circular of relevance, so far as the present case is concerned, was No. 60792-G.E.(G.L.)-358/72-R dated 20-10-1972 in which decision was taken in paragraph 2 of it that the order issued in 1961 that all unobjectionable encroachment committed prior to 13-9-1961 were to be settled irrespective of the area encroached had led in some cases to concentration of land with landed persons to the disadvantage of landless persons and therefore the Government had decided to revoke that order. Only landless persons who had encroached on Government land by 16-8-1972 would be eligible for settlement of encroachments to the extent they were landless. In paragraph 10 of the circular a saving was given saying that there might be a number of cases where the Tahasildar had already given an intimation to the encroacher for settlement of unobjectionable encroachment with him. If follow up action had been taken by all concerned in time in accordance with the terms of the intimation, then those cases should be finalised accordingly and that the orders in paragraph 2, i.e. revocation of the Approved Lease Principles to that effect, were not to affect such cases nor was it to affect the Approved Lease Principles or anything duly done or suffered thereunder. In the meantime the 1972 Act came into force with effect from 16-2-1972 in which provision had been made under Section 7(2) that notwithstanding the power of the Collector to summarily evict a person from the land, he may yet decide not to take action under the

eviction provision for unauthorised occupation if such occupation does not amount to an objectionable encroachment or even if it amounts to objectionable encroachment yet not likely to prejudice or adversely affect any development scheme, programme or work specified by general or special order made in that behalf by the State Government or the prescribed authority or the interests of the general public of the village community.

7. The ordersheets of the two encroachment cases abundantly show the petitioner all throughout to have adopted the stand of admitting the encroachments and moving for settlement of the encroached lands with him on payment of back rent and salami. The fact appears from the order dated 27-4-1970 as also 12-11-1970. Such provision for settlement was only available to be made under the Approved Lease Principles of 26-10-1961 which stipulated the condition precedent that the settlement was available only if the encroachment was prior to 1-6-1961. The provision itself was possible of wide scale abuse by setting up of spurious claims of post-June, 1961 encroachments as pre-June, 1961 encroachments and claim for benefit of settlement. The fact itself was acknowledged by the Government in its letter dated 1-6-1970. It was hence the responsibility of the officer entrusted with the functions to make strict enquiry as to whether the encroachment was in fact prior to 1-6-1961 or not. Such a requirement was also stressed in Government's letter dated 1-6-1970. It is however found that in both the encroachment cases the fact was gullibly accepted by the Additional Tahasildar only upon the affidavits filed by the petitioner saying in one case the encroachment to be since 1944 and in the other case, to be since 1938. The case records do not show absolutely any enquiry to have been at all made in the matter. The fact of such encroachments having never been established through any independent enquiry and indeed the Additional Tahasildar having never taken any pains to actually enquire, to make a spot enquiry, or to take evidence or call for the report of the Revenue Inspector or consider the various records available, it could not be said that the findings recorded of his satisfaction of the encroachments being prior to 13-9-1961 and being unobjectionable and that they should be settled with the petitioner on payment of back rent and salami were reached in due process of law on which the right of the petitioner could be founded. On this basis alone I am not prepared to accept the submission that valid orders had been passed on 12-11-1970 and that the orders passed on 1-12-1971 on such basis to convert the encroachment cases to lease cases had been properly passed. The next thing of importance to note was that orders were passed by the Additional Tahasildar both on 12- II -1970 and 1-12-1971. The learned counsel for the petitioner has not brought anything to my notice that the Additional Tahasildar was a person competent to pass the orders. Evidently the orders dated 12-11-1970 were passed in the encroachment cases which had been initiated under the 1954 Act. That Act though designated Collector as the authority u/s 6(2) thereof to direct eviction of an encroacher yet in Section 15 thereof made provision for delegation of power of the Collector. Both the proceedings were initiated by the Tahasitdar.

It has not been shown to us that the Additional Tahasildar was a person authorised to initiate the proceedings, but whatever that might be, the power of settlement of an encroached land was not available under the 1954 Act but was only under the Approved Lease Principles which were being resorted to by the Additional Tahasildar as is clear from his reference to the G.O. No. 14960 (6) dated 4-3-1964 which itself made reference to the Approved Lease Principles of 26-10-1961. The Approved Lease Principles however did not authorise the Additional Tahasildar to make any settlement or accept salami as has been noticed earlier and under Clause 12 thereof power was only vested in the Tahasildar of the area or in his absence, in the Sub-Divisional Officer. Nothing has been shown to us that an Additional Tahasildar is ipso facto a Tahasildar. In the circular of 23-12-1962 referred to earlier it was stated that where Gazetted Tahasildar was not there, the Sub-Divisional Officer was to have the authority. In the O.G.L.S. Act an amendment was made by Act 22 of 1973 to Section 2 adding Sub-sec, (a) thereto to incorporate definition of Tahasildar" in the context of that Act. It was stated that "Tahasildar" means any officer appointed as an Assistant Settlement Officer under the Orissa Survey and Settlement Act, 1958 (Orissa Act 3 of 1959). It was only by Act 5 of 1974 that Section 2(a) was amended to say that "Tahasildar" includes an "Additional Tahasildar." It is hence clear that prior to the amendment, "Additional Tahasildar" was not included within the meaning of Tahasildar." Again in Orissa General Clauses Act, 1937 in Section 2(46-a) "Tahasildar" was defined by Amendment Act 23 of 1963, as the Chief Officer in charge of the revenue administration of a Tahasil. "Additional Tahasildar" being not such Chief Officer would not be "Tahasildar" unless he has been specifically made so. This has been so specifically made only in the Orissa Survey and Settlement Rules, 1962. The Orissa Survey and Settlement Act, 1958 does not itself define "Tahasildar" but speaks of only "Assistant Settlement Officer" who is a person as such appointed by the Board of Revenue. The Orissa Survey and Settlement Rules, 1962 defines "Tahasildar" as the .Chief Officer in charge of the revenue administration of a Tahasil and includes an "Additional Tahasildar. "Tahasildar" includes an "Additional Tahasildar" only so far as the functions under the Orissa Survey and Settlement Act are concerned and not otherwise". The considerations would show that "Additional Tahasildar" would not ipso facto become Tahasildar" for the purposes of the Approved Lease Principles which specifically said that the authority to collect salami and settle the land would be the Tahasildar but, as has been later on clarified in the circular of 23-12-1962, he would be a Gazetted Tahasildar and in his absence the functions were to be discharged by the Sub-Divisional Officer, I am hence to conclude that the orders passed either on 12-11-1970 or on 1-12-1971 were not to have been passed by the Additional Tahasildar being beyond his competence. The argument that the cases having been directed to be converted as lease cases could not have been converted as encroachment cases later on by the Tahasildar hence does not survive.

8. Next it is the contention that the petitioner having become tenant under the

State by acceptance of rent is not evictable. The submission does not seem to be factually correct. As a matter of fact, even orders dated 12-11-1970 were not that the lands were to be settled with the petitioner but that they could be settled with him on payment of back rent and salami. On 1-12-1971 the orders passed were to convert the cases to lease cases asking the petitioner to pay the salami within the time fixed so as to settle the lands in his favour. No orders were ever passed actually to settle the lands with him. Nothing has also been produced before us to show that the salami and the back rent were paid. There was hence never creation of any tenancy. The principles laid down in ILR (1961) Cut 595 (supra) have no application.

9. Another submission made regarding the proceedings of settlement to have been under the O.G.I.S. Act also does not survive scrutiny. The O.G.L.S. Act devised a complete different procedure for reservation and settlement of Government lands. The provisions came into operation only when specific Government lands were available for reservation and settlement with an inbuilt procedure that first of all reservation was to be made in order of priority amongst co-operative farming societies formed by landless agricultural labourers, any landless agricultural labourers of the village in which the land was situate or of any neighbouring village. Ex-servicemen or members of the Armed Forces of the Union if they belonged to the village in which the land was situate, and raiyats who personally cultivated not more than one standard acre of contiguous land. The settlement of the lands" with the petitioner were admittedly not purported to be made under the provisions of the O.G.L.S. Act but under the Approved Lease Principles.

10. Even so far as the circular of the Government dated 20-10-1972 where the Government revoked the Approved Lease Principles regarding settlement of land with encroacher where the encroachment was prior to 13-9-1961 is concerned, the saving made in paragraph 10 thereof, as referred to earlier, is of no help to the petitioner. The benefit of the provision was available only if follow up action till the date of the circular had been taken by all concerned in accordance with the terms of the intimation that the land would be settled with the encroacher. There is no finding to such effect and on the contrary, it is seen that the certificate cases have been instituted against the petitioner for realisation of the back rent and salami. It thus cannot be said that either the State or the petitioner had taken follow up action in the matter. The protection under paragraph 10 of the circular of 20-10-1972 is not applicable to the case.

11. Hence all the submissions raised by the learned counsel for the petitioner as regards the eviction from the lands fail.

12. However, so far as the certificate proceedings are concerned, it is submitted that the dues purported to be collected from the petitioner comprise both of the assessment of back rent as also salami which was fixed for settlement of the lands. No details have been made available in the petition as regards such stand. If it is correct that the petitioner is being proceeded against under the Orissa

Public Demand Recovery Act for realisation of the salami fixed, it stands to reason that he having been evicted from the lands, the salami does not become payable. It is not known whether the petitioner had raised such objection in the certificate cases. But because of the conclusions reached, I direct that the petitioner may approach the Certificate Officer and assail before him the demand raised for realisation of the salami which question, if raised, the Certificate Officer will decide in the respective cases.

13. In the result, subject to the observations made regarding the certificate cases, the case is dismissed. There shall be no order as to costs.

S.K. Mohanty, J.

14. I agree.