

(1987) 03 OHC CK 0028

In the Orissa High Court

Case No : Original Jurisdiction Case No, 1490 of 1978

Banwarilal Agarwala

APPELLANT

Vs

Tahasildar, Athamallik and Others

RESPONDENT

Date of Decision : 25-03-1987

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3, 3B, 7, 7A(1)

Citation : (1987) 64 CLT 348

Hon'ble Judges : L. Rath, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Additional Standing Counsel and S.S. Swain, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The Petitioner challenges the order of the Sub-Divisional Officer dated 21-2-1976 annexed as Anntxure-4 the order of the Additional District? Magistrate dated 14-10-1976 annexed as Annexure-5 as well as the order of the Revenue Divisional Commissioner dated 30-4-1978 annexed as Annexure-6 to the writ petition.

2. The Petitioner?s case is that 0. 14 decimals of land out of plot No. 68, khata No. 3 lying between the house of the Petitioner and the main road was settled in his favour by the Tahasildar in Lease Case No. 654/72 by order dated 8-6-1974. Pursuant to the said order, patta was issued in favour of the Petitioner as per Arinexure-2, and name of the Petitioner was also recorded in the Records-of-Rights as per Annexure-3. Subsequently an appeal was filed before the Sub-Divisional Officer which was numbered as Lease Appeal No. 6 of 1975 and the Sub-Divisional Officer by his order dated 21-2-1976 quashed the order of the Tahasildar dated 8-6-1974. The Sub-Divisional officer, however, directed the Tahsildar to enquire into the fact as to whether there is any passage and approach to the house of the Petitioner and if the Tahasildar is satisfied that there is any reasonable passage then he may lease out a reasonable area to the

Petitioner to be used as a passage to his house. The Petitioner carried a revision to the Additional District Magistrate. The Additional District Magistrate dismissed the revision and confirmed the order of the Sub-Divisional Officer, but on the ground other than those taken by the Sub-Divisional Officer. This order of the Additional District Magistrate has been annexed as Annexure-5. The Petitioner carried a further revision to the Revenue Divisional Commissioner who by order dated 30.4-1978 rejected the same on a finding that no second revision lies u/s 7A (1) of the Orissa Government Land Settlement Act (hereinafter to be referred to as 'The Act'). This order of the Revenue Divisional Commissioner is annexed as Annexure-6.

3. Mr. Mohanty for the Petitioner though initially raised the contention that a second revision lies to the Revenue Divisional Commissioner u/s 7A (1) of the Act, but later on did not press the said contention and in our view rightly so since Section 7A (1) contemplates only one revision and the revisional authority is the Collector when an appellate order is passed by the Sub-Divisional Officer and the revisional authority is the Revenue Divisional Commissioner when the appellate authority is the Collector. Consequently, the order of the Revenue Divisional Commissioner annexed as Annexure-6 is unassailable.

4. Mr. Mohanty, the learned Counsel for the Petitioner then challenged the legality of the order of the Sub-Divisional Officer as per Annexure-4 as well as the order of the Additional District Magistrate as per Annexure-5. According to Mr. Mohanty, the conclusion of the Sub-Divisional Officer that the land in question has not been used for the purpose for which the lease was applied for is not the requirement of Section 3-B of the Act, and, therefore, the order directing resumption is illegal. We do not find any force in the aforesaid contention. The Sub-Divisional Officer does not exercise the power of resumption contained in Section 3-B of the Act. On the other hand, the Sub-Divisional Officer exercises the power of appeal as contained in Section 7 of the Act. There is no restriction on the power of the appellate authority while hearing an appeal against an order made u/s 3 of the Act. In the absence of any restriction, it must be assumed that it is as wide as that of the original authority and if the Sub-Divisional Officer comes to the conclusion that the original order of settlement is contrary to law or is not in accordance with the procedure laid down under the Act, then he could be free to interfere with the order of settlement. The Sub-Divisional Officer found as a fact that the application had been made by the Petitioner for the purpose of excavating a tank to be used by the general public. In that view of the matter the land could not have been settled for the purpose of construction of a house and the Sub-Divisional Officer, therefore, as an appellate authority -was fully justified in interfering with the order of settlement. We have ourselves examined the application of the Petitioner and it has been clearly stated therein that the land applied for would be used for excavating a tank to be used by the public at large. In that view of the matter the Tahasildar was fully in error in setting the land for the purpose of construction of a house. That apart, while examining the original record, we found that Annexure-2 as has been filed in this case done not

tally with the original document, There is no mention in the original document that purpose of lease is for construction of 'Ghar', In such circumstances it must be held that the Petitioner has not approached this Court with clean hands. We do not find any error in the order of the Sub-Divisional Officer so as to be interfered with by this Court in exercise of its extraordinary jurisdiction. .

5. Coming to the order of the Additional District Magistrate (Annexure-5), the Additional District Magistrate came to the conclusion that it was not open to the Tahasildar to settle the land for a purpose different than that applied for and, therefore, the order of settlement was manifestly irregular and bad. This conclusion of the Additional District Magistrate cannot be interfered with as we have already held earlier that the Petitioner did make an application for settlement in question for the purpose of excavating a tank to be used by the villagers. That being so, the Tahasildar had no jurisdiction to settle the land for the purpose of construction of a house. The revisional authority was, therefore, fully justified in affirming the order of the Sub-Divisional Officer who had set aside the order of settlement passed by the Tahasildar, We do not find any infirmity in the said order so as to be interfered with by this Court.

6. Mr. Mohanty then contends that even if the settlement in question goes, yet the direction of the Sub-Divisional Officer to the Tahasildar to enquire fresh and find out as to whether for the purpose of providing a passage to the Petitioner's house some area can be leased out and if he is so satisfied, then extent of the land necessary for the same may be settled with the Petitioner and this direction of the Sub-Divisional Officer was illegally interfered with by the Additional District Magistrate even though none of the villagers preferred any revision and the revision was at the instance of the Petitioner. We find from the revisional order that the Additional District Magistrate had mentioned that the~ question of providing a passage will be considered denovo on the basis of a fresh application by the Petitioner and should not be handed over without any application for the same. This order, of the Additional District Magistrate is obviously without jurisdiction since it is the Petitioner who was aggrieved by the order of the Sub-Divisional Officer and had approached the revisional authority, challenging the order of cancellation of the settlement. The aggrieved party at whose instance the appeal had been registered did not challenge that part of the direction of the Sub-Divisional Officer to the Tahasildar to enquire afresh to find out the necessity of a passage to the Petitioner's house. In that view of the matter the said direction of the Sub-Divisional Officer became final and could not have been interfered with by the revisional authority. We would, therefore, quash the said observations of the revisional authority and direct that in accordance with the order of the Sub-Divisional Officer dated 21-2-1976, annexed as Annexure-4, the Tahasildar may re-enquire to find out whether there is any passage and approach to the house of the Petitioner and if not, then a 'reasonable area may by way of lease be granted to the Petitioner.

7. Subject to the aforesaid observations, the writ application fails and is

accordingly dismissed, but in the circumstances, there would be no order as to costs.

L. Rath, J.

8. I agree.