
(1989) 04 OHC CK 0041

In the Orissa High Court

Case No : Original Jurisdiction Case No. 216 of 1987

Basanta Kumari Pati

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-04-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Grama Panchayat Rules, 1968 — Rule 86, 86(3)

Citation : (1989) 68 CLT 198

Hon'ble Judges : K.P. Mohapatra, J;A.K. Padhi, J

Bench : Division Bench

Advocate : M.M. Das, for the Appellant; Additional Government Advocate and A. Pasayat, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—This is a petition under Articles 226 and 227 of the Constitution of India for quashing Annexures 7 and 8 relating to cancellation of a long term lease for the purpose of pisciculture.

2. The facts of the case may be stated in brief. The Petitioner obviously does not belong to fisherman caste and is a Brahmin housewife stated to be carrying on business in fish. She made an application to the Block Development Officer, Pipili (opposite party No. 3) on 20-6.1984 for long term lease of a tank locally named as Ranapur Bilavarandia situate in village Dandamukundapur and under the management and, control of Dandamukundapur Grama Panchayat (opposite party No. 4). After observing all necessary formalities according to the rules, Opposite party No. 3 recommended to the Collector, Puri (opposite party No. 2) for grant of the long term lease in favour of the Petitioner. Opposite party No. 2 approved the lease by order dated 16.5-1985 and the fact of such approval was communicated by opposite party No. 3 by letter No. 1353 dated 22-5-1985 to opposite party No. 4. Opposite party No. 4 in its turn under letter dated 31.5-1985 (Annexure 2) communicated the fact of approval of the long term

lease to the Petitioner and directed her to deposit the first instalment of premium of Rs. 238/- for the year 1985-86. The amount was deposited on 31-8-1985 and on 18-3-1986 lease deed (Annexure 3) was executed both by the Petitioner and the Sarpanch on behalf of opposite party No. 4, whereby the disputed tank was leased out in favour of the Petitioner for ten years beginning from 1985-86 for the purpose of pisciculture. After the lease, the Petitioner took steps for renovation of the disputed tank and for pisciculture and obtained a loan of Rs. 23,605/- from the State Bank of India, Pipili Branch and invested the amount. The second instalment of the premium of Rs. 238/- was deposited by her on 19-9-1986., In this way the Petitioner took steps and did actions for the purpose of pisciculture on the strength of the lease of the disputed tank for a period of ten years.

The Petitioner, however, received a jolt when opposite party Nos. 5 to 34, residents of villages under Dandamukundapur Grama Panchayat raised objections to the grant of the long term lease on several grounds, mainly non-compliance of the relevant rules, and filed O. J. C. No. 1899 of 1986 in this Court which by order dated 1-8-1986 -directed opposite party No. 2 for disposal of the representation of the villagers who had raised objections to the grant of the long term lease in favour of the Petitioner.

Insurances of the aforesaid order and after hearing the Petitioner, as well as the objectors, oppositeparty No. 2 by his order dated 31-10-1986 (Annexure 7) cancelled, the lease mainly in the ground that the Petitioner did not belong to fisherman caste and is a Brahmin housewife. Pursuant to Annexure 7, opposite party No. 4 under Annexure 8 intimated the Petitioner of the fact of cancellation of the lease and to vacate passes sign of the disputed tank. It is averred by the Petitioner that once the long term lease had been granted in her favour strictly according to the rules and in pursuance of which the lease deed was executed and registered, it was illegal and improper an the part of opposite party No. 2 to have cancelled the aforesaid lease an entirely unsustainable grounds. Therefore, Annexures 7 and 8 being not in accordance with law should be quashed.

3. It appears from the records that despite service of notice and appearance of mast of the opposite parties, they did not chaise to file their counters.

4. While Mr. M.M. Das, learned Counsel for the Petitioner, assailed Annexures 7 and 8 an the ground of their invalidity according to the rules, learned Counsel for the State and Mr. A. Pasayat far the other opposite parties urged that the Collector who had approved the long term lease was within the limits of his jurisdiction to have cancelled the same and satisfaction that the lease had been granted an misrepresentation of facts.

5. In the impugned order (Annexure 7) opposite party No. 2 reached the fallowing conclusion:

All these evidences go to show that the lessee Smt. Basanta Kumari Pati is not a fisherman or fisherwoman by caste or profession. She is not a Co-operative

Society. She is not a landless labourer or marginal farmer or a member of Scheduled Caste or Scheduled Tribe. She, therefore, is not to be granted a long term lease under Rule 86 of the O. G. P. Rules. The District Magistrate & Collector, Puri while approving the proposal of the Grama panchayat for leasing out the tank in favour of Smt. Basanta Kumari Pati could not be given true state of affairs. He has passed orders under misrepresentation of facts. Such orders are void abinitio. In view of this finding on this important issue, other issues raised by the Petitioners need not be further examined.

The Petitioner never claimed that she belongs to fisherman caste, or a landless labourer, or a marginal farmer. Patently she does not belong to scheduled caste or scheduled tribe and is far from being a co-operative society. She claimed to be dealing with fish as a profession or in other words a fisherwoman by profession. Opposite party No. 2 came to the conclusion that she was not fisherwoman by profession on the basis of a report of Tahasildar Pipili, dated 22-2-1986 where he stated that the Petitioner had never been seen moving from village to village selling fish. On the other hand, she is an old Brahmin lady of a financially well up family: Both the Tahasildar and opposite party No. 2 thought that a person who moves from street to street selling fish can only be fisherman or fisherwoman by profession. A person who sits in his cosy office and manages a huge business of purchasing and selling fish through employees or otherwise, according to them, is not a fisherman or fisherwoman by profession. The line of thought seems to be faulty and illogical. A man or woman who does not belong to fisherman caste can invest huge sums of money and carry on business in fish. As a matter of fact, a particular business now-a-days is not confined to a particular community. A person who runs an oil mill producing and marketing oil need not necessarily be an oilman by caste. A person running a rice mill need not belong to a caste of farmers. Instances will be too many to show that people irrespective of caste, faith or religion carry on business to eke out a living. Therefore, a narrow view cannot be taken, as has been done in this case, that in order to carry on business in fish or to do pisciculture, a person must belong to fisherman caste and one who moves from street to street selling fish can be said to be a fisherman or fisherwoman by profession. We entirely disagree with the view taken by opposite party No. 2. in this regard.

6. According to Rule 86(3) of the Orissa Grama Panchayats Rules, 1968, the water area vested in or under the management and control of the gram sasan may with the approval of the Collector be leased out by negotiation for a period not exceeding ten years in favour of an individual who is a fisherman by caste or profession, any group of individuals or a registered Cooperative Society consisting only of fisherman by caste or profession, landless labourers, marginal farmers, scheduled caste and scheduled tribe persons, who are desirous to take pisciculture on modern lines in such water area. The Petitioner claimed that she was a fisherwoman by profession and was desirous to take pisciculture on modern lines. On being satisfied that the rules of procedure laid down for the purpose were complied with the long term lease was granted in favour of the

Petitioner and accordingly the lease deed was duly executed. Premium for the lease for two years was also paid. She brought a huge loan from the State Bank of India and invested the same for renovation of the tank and for pisciculture. At this juncture, it was most inequitable on the part of opposite party No. 2 to cancel the lease on a very unsustainable ground, as discussed above; particularly when there was no misrepresentation of facts. This being the factual position, we are of the vide that the impugned order (Annexure-7) and the consequential letter (Annexure-8) are unsustainable according to law and so they are liable to be quashed.

7. For the reasons stated above, the writ petition is allowed and Annexures-7 and 8 are hereby quashed. There shall be no order as to costs.

A.K. Padhi, J.

8. I agree.

Writ Petition allowed.