
(2010) 03 OHC CK 0067
In the Orissa High Court

Bata Krushna Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 25-03-2010

Acts Referred:

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

Citation : (2010) 109 CLT 747 : (2010) 1 OLR 723

Hon'ble Judges : V. Gopalagowda, C.J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard learned Counsel for the petitioner as well as learned Government Advocate.

2. This writ petition has been filed challenging the order dated 28.7.1998 passed by the Additional District Magistrate, Khurda in Leave Revision Case No. 852 of 1998 in exercise of power u/s 7-A(3) of the Orissa Government Land Settlement Act, 1962 in setting aside the lease granted by the Tahasildar, Bhubaneswar in favour of one Ramesh Chandra Behera, in respect of a piece of land measuring an area of Ac.1.500 situated over plot No. 647, Khata No. 420 in village Pathargadia in W.L. Case No. 1668 of 1974 and settled in his favour.

3. Case of the petitioner is that the aforesaid Ramesh Chandra Behera in order to meet his legal necessity sold an area of A.O.092 out of the aforesaid area of Ac.1.500 in his favour by virtue of a registered sale deed on 16.5.1983 under Annexure-3 and delivered possession to him. It is further case of the petitioner that after purchasing the said land, he is in peaceful possession of the same. According to the petitioner, he had no knowledge about cancellation of lease of the land in question granted in favour of the petitioner's vendor - Ramesh Chandra Behera by the Additional District Magistrate, Bhubaneswar.

4. Section 7-A(3) of the Orissa Government Land Settlement Act provides as follows:

The Collector may, of his own motion or otherwise, call for and examine the records of any proceeding in which any authority, subordinate to it has passed an order under this Act for the purpose of satisfying himself that any such order was not passed under a mistake of fact or owing to a fraud or misrepresentation or on account of any material irregularity of procedure and may pass such order thereon as he thinks fit.

Provided that no order shall be passed under this sub-section unless the person affected by the proposed order has been given the reasonable opportunity of being heard in the matter.

Provided further than no proceeding under this sub-section shall be initiated after the expiry of fourteen years from the date of the order.

5. On perusal of the impugned order, it reveals that the Additional District Magistrate, Bhubaneswar has not made any attempt to comply with the requirement of first proviso to Section 7-A(3) of the Act quoted above, by calling for information from the office of the Sub-Registrar as to whether in the meantime the leasehold property or any portion thereof has been alienated by the original lessee to any other party. Had such import been called for, the revisional authority could have ascertained at the petitioner has purchased in the interregnum a portion of the leasehold land from the original lessee and thereupon the Additional District Magistrate, Bhubaneswar should have issued notice to the petitioner, who is the real affected party, in order to comply with the first proviso to Section 7-A(3) of the Act. No such step has been taken by the Additional District Magistrate before passing the impugned order.

6. The legal position which has arisen in this proceeding came up for consideration by this Court in the case of *Rama Chandra Pandav v. State of Orissa and Ors.* (W.P.(C) No. 14364 of 2006 decided on 9.11.2006) and in the said case this Court held that since the petitioner had purchased a portion of the leasehold land from the original lessee, the order of the Additional District Magistrate was not sustainable as the same was contrary to the provisions of the Orissa Government Land Settlement Act and accordingly, quashed the same. Further, we find that the original lease was granted long back in 1974 whereas the order of the revisional authority was passed in 1998, i.e., about 24 years after the grant of lease. Under the second proviso to Section 7A (3) referred to above, no proceeding can be initiated after expiry of fourteen years from the date of order granting lease. Since in the instant case the proceeding u/s 7-A(3) of the OGLS Act was initiated by the revisional authority after 24 years of grant of lease, i.e., beyond the statutory period of limitation prescribed, on that ground also the present writ petition succeeds.

7. In view of the aforesaid provision of law and taking note of the decision of this Court in the case of *Rama Chandra Pandav* (supra), we hold that the impugned order dated 28.7.1998 passed by the Additional District Magistrate, Bhubaneswar in Lease Revision Case No. 852 of 1998 cannot be sustained and the same is set

aside.

8. The writ petition is allowed and disposed of.

9. Urgent certified copy of the order may be granted on proper application.