

(2008) 07 OHC CK 0006

In the Orissa High Court

Case No : Writ Petition (C) No's. 1254 and 7231 of 2004

Bauribandhu Sahoo and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(5), 6, 8(3), 8(4), 9

Citation : (2008) CLT 632 Supp

Hon'ble Judges : Sanju Panda, J;P.K. Tripathy, J

Bench : Division Bench

Advocate : S.P. Mishra, for the Appellant; Additional Government Advocate for Opp. Parties 1, 2, 5 and 6, Mahadev Mishra, S.B. Mohanty, M. Mishra, for Opp. Party No. 3, Kishore Kumar Mishra, G. Agarwal, R.K. Mahanta, for Opp. Party No. 4, Budhadev Routray, B. Singh, P.K. Dash, D.K. Mohapatra, B.N. Satpathy, B.B. Routray, D. Mohapatra, K. Sahoo, S. Das and R.P. Dalai for Intervenor, for the Respondent

Judgement

Sanju Panda, J.—On the submission of the Petitioners in the above noted batch of writ petitions, all these cases were taken up for analogous hearing on the ground that common question of law and similar facts are involved. Therefore, all the writ petitions are disposed of by this common judgment.

2. Sum and substance of the contentions of the Petitioners in each of the writ petitions, is noted below:

W.P.(C) No. 1254 of 2004:-

Being aggrieved by the action of the opposite parties 5 and 6 i.e. Board of Revenue, Orissa and Special Officer-cum-Competent Authority, Urban Land Ceiling, Cuttack, without giving any notice to the Petitioners under the Urban Land (Ceiling and Regulations) Act, 1976 (hereinafter referred to as "the 1976 Act"), the authorities are trying to take possession of plot Nos. 45, 46, and 47 of mouza Bidyadharpur, Cuttack Sadar though they are the recorded title holders. Thus, the Petitioners have filed this writ petition with the prayer to declare that

the opposite parties cannot have any right, title and interest over the plot Nos. 45,46 and 47 of Mouza Bidyadharpur, Cuttack Sadar and they are in No. way entitled to disturb the possession of the Petitioners in respect of the said plots of land and issue a direction that any decision or order by the opposite parties 5 and 6 under the Urban Land (Ceiling and Regulation Act, 1976 in respect of the said plots are completely null and void and without jurisdiction and quash Annexure-5 to the extent it affects Plot Nos. 45, 46 and 47 shown in the schedule of the same.

W.P.(C) No. 7231 of 2004:-

The Petitioner has filed this writ petition with a prayer to restore all such lands in question for which the Petitioner has filed statement u/s 6 of the Urban Land (Ceiling & Regulation) Act, 1976 as at Annexure-1, which was repealed in the year 1999 by the Urban Land (Ceiling & Regulation) Repeal Act, 1999.

OJC No. 13965 of 1999:-

The Petitioner-Association has filed this writ petition with a prayer to direct the opposite party No. 1-State Government to allot the land mentioned in the Schedule of the petition in which applications had been made in favour of the Petitioner-Association by way of lease or otherwise in accordance with the provisions of the Act and Rules i.e. Urban Land Ceiling Act, 1976 and also direct the State Government to call for the entire records and examine the matters relating to these lands by making necessary enquiry and further direct the opposite parties to dispose of the applications made by the Petitioner-Association for allotment of the lands in its favour within a reasonable time.

W.P.(C) No. 4338 of 2002:-

The Petitioner-Association in this writ petition has prayed for a direction to opposite party No. 4 to give effect to the decision dated 16.4.2002 and the subsequent decision of the Tender Committee dated 1:6.2002 and allow the Petitioner to deposit the entire amount of Rs. 61,00,000/- within a reasonable time W.P.(C) No. 13222 of 2005:-

The Petitioner-Association in this writ petition has prayed for a direction to the opposite parties 1 and 2 to lease out the ceiling surplus land as mentioned in the Schedule of the petition in favour of the members of the Petitioner-Association within a stipulated time and for a direction to opposite party No. 1 to consider the application of the members of the Petitioner-Association for grant of lease within a stipulated time.

3. Since common questions are involved in these writ petitions, without burdening the judgment with the facts of all the writ petitions, we deal with the facts involved in W.P.(C) No. 1254 of 2004.

The Petitioners are the owners of the plots as per 1931 Settlement Records. Possession was in the name of Daitari Sahoo, the grand father of the Petitioners

(Annexure-I). Record-of-rights of the year 1974 -(Annexure-2) shows that the possession was in the name of the father of Petitioner No. 1. Record-of-rights of the year 1998 (Annexure-3) shows that the possession was in the name of the father of the Petitioners. As per 1931 Settlements, plot numbers were 557,558, 555, 553 and 554 and the serial number was 5. In 1974 Settlement records, plot numbers were 44,45,46 and 47 and the serial number was 4. Plot Nos. 553 and 554 of 1931 Settlement Records were plot No. 45 in 1974 Settlement Records. In 1998 Settlement Records, the said four plots of 1974 Settlement Records were corresponding to Plot Nos. 1206, 1204,1205 & 1063.

For better appreciation, the respective plot numbers in Settlements of the years 1931, 1974 and 1998 are depicted below in a tabular manner.

SETTLEMENTS

1931

1974

1998

Plot Nos.

553

45

1204

554

-

-

555

47

1063

557

46

1205

558

44

1206

In the said record of rights, plots Nos. 44, 45 and 46 show constructed house and plot No. 47 shows as Jalasraya (Garia) and at present a part of plot No. 47 is

covered by constructed house and the present Petitioners are legal heirs of the recorded possession holders. It is a fact that plot No. 44 is not covered under the impugned action of the opposite parties. Before filing of the writ petition, opposite party No. 6 i.e. Special Officer-cum-Competent Authority, came to the plots of land where the Petitioners are residing and informed them that plot nos 45, 46 and 47 barring the area on which houses have been built would be taken over by them under the 1976 Act and on enquiry the Petitioners came to know that already two writ petitions i.e. OJC No. 13965 of 1999 and W.P.(C) No. 4438 of 2002 were pending in respect of some land and Petitioners had No. knowledge regarding any proceeding under the 1976 Act.

4. The grievance of the Petitioners is that No. notice was served on them though they are the recorded land holder and the authorities have not served the notice as prescribed u/s 8(3) of the Act. Therefore, they are deprived of filing their objection u/s 8(4) of the Act and the final settlement published u/s 9 of the Act is not in accordance with law as it was not passed after considering the objection of the Petitioners. As the Petitioners did not receive any notice, the question of surrendering or delivering the possession of the excess land to the Government u/s 10(5) of the Act followed by the act of taking over possession of the excess land by the Government u/s 10(6) of the Act does not arise. The service of draft statement as prescribed u/s 8(3) should be complied with as per the rules and Rule-5 indicates that the procedure. Rule-5 shows that the notice is a must on the holder of the vacant land, and on all other persons so far as may be known who are likely to have any claim or interest or possession in respect of the vacant land by sending registered notice. As No. notice was served either on the Petitioners or their predecessor-in-interest, the entire procedure under the Act is vitiated as a person should not be deprived of his property without due process of law.

5. Opposite party No. 2-Housing & Urban Development Department, Government of Orissa, Bhubaneswar has filed counter affidavit to the writ petition. In the counter affidavit, it has specifically been stated that the names of one Daitary Sahoo and Ors. were recorded in the remark column of Annexure-1 in respect of Plot No. 9", in Sikkim Khata No. 22 of mouza-Bidyadharpur. In 1974 Settlement, the record-of-rights was published in the name of Jyotindra Kooverjee Chouda, plot No. 9", was recorded as plot No. 44 in the possession of Alekha Sahoo, son of Daitary Sahoo and Ors. in Sikkimi Khata No. 9 for an area of Ac.0.19 decimals as is evident from Annexure-2. After the consolidation ROR was published in the year 1998, said plot No. 44 was recorded as plot No. 1206 wherein in remark column it has been mentioned that Alekha Sahoo and Ors. are in possession in Sikkim Khata No. 22 as it reveals from Annexure-3. From Annexures 1 to 3, it is clear that the Petitioners were Sikkimi tenants under the landlord Jyotindra Kooverjee Chouda and their names were recorded in respect of only one plot i.e., Plot No. 9", and Petitioners are not in possession of plot Nos. 557, 555, 553 and 543 as per sabik ROR which is corresponding to consolidation ROR plot Nos. 1063, 1204 and 1205 and those plots were recorded in the name of and

possessed by Jyotindra Kooverjee Chouda and plot No. 9", corresponding to Half Plot No. 44 has not been included in the Ceiling Case No. 64 of 1976. It reveals from the order dated 19.9.1983 of the competent authority that Alekha Sahoo has built up a house in plot No. 45 (without any authority) covering an area of Ac. 0.050 decs and over plot No. 46 covering an area of Ac.0.080 decs. (in total, the area comes to Ac.0.130 decs. and as such, an appurtenant to an extent of Ac.0.125 dec. has been allowed to the possession of the said house situated in plot Nos. 45 and 46. Therefore, the total building and appurtenant thereto come to Ac.0.255 decs. and thus, the total area has been excluded from the purview of the ceiling and the aforesaid order dated 19.9.1983 has been annexed by the Opposite Party as Annexure A/2. As the Petitioners' name have only been reflected in the remark column of ROR as Sikkimi tenants in respect of one plot and their names were not recorded in respect of other plots, they have No. right over the vacant area. The recorded tenant Jyotindra Kooverjee Chouda having surrendered the vacant area in Ceiling Case No. 64 of 1976, the said land has been vested with the Government and Government have taken physical possession of the said land from 17.5.1985 measuring an area of Ac.13.145 dec. and the returnee had received the compensation of Rs. 25,000 towards the said land on 6.2.1986 and after obtaining the possession, Government has distributed the said land. Therefore, the Petitioners have No. right on the lands surrendered to the Government by Jyotindra Kooverjee Chouda, the recorded tenant and as the Petitioners have raised objection to the same only in the year 2004 after a lapse of 19 years, the writ petitions are liable to be dismissed.

6. Considering the above rival submissions of the parties and after going through the records filed by the parties, this Court finds that the ROR filed by the Petitioners as per Annexures-1 to 3 reveals that the Petitioners' predecessor-in-interest were recorded as Sikkimi tenants in respect of one plot and the said ROR is silent, i.e., plot Nos. 45, 46 and 47, are concerned. While starting the proceeding under the Act, the authorities issued notice to the recorded tenants and they complied with all the provisions as per the Statute, since the lands are covered under construction and possession thereof has been excluded from the purview of the ceiling case and the authorities have excluded those areas from plot Nos. 45 and 46 and also plot No. 44 was excluded from the purview of ceiling case under the Act as in the meantime the Urban Land (Ceiling and Regulation) Act, 1976 has been repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 which came into force with effect from 22nd March, 1999 and the aforesaid Act was adopted by the Government with effect from 5.4.2002.

7. Sections 3 and 4 of the said Act read as under.

3. Savings -

(1) The repeal of the principal Act shall not affect-

(a) the vesting of any vacant land under Sub-section (3) of Section 10,

possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority;

(b) the validity of any order granting exemption under Sub-section (1) of Section 20 or any action taken thereunder, notwithstanding any judgment of any Court to the contrary;

(c) any payment made to the State Government as a condition for granting exemption under Sub-section (1) of Section 20.

2. Where-

(a) any land is deemed to have vested in the State Government under Sub-section (3) of Section 10 of the principal Act, but possession of which has not been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority; and

(b) any amount has been paid by the State Govt. with respect to such land, Then, such land shall not be restored unless the amount paid, if any, has been refunded to the State Government.

4. Abatement of legal proceedings - All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or any authority shall abate;

Provided that this section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

8. Section 4 of the Act, all the proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any Court, tribunal or any authority shall abate and as per the Proviso to the said section shall not apply to the proceedings relating to Sections 11, 12, 13 and 14 of the Principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorized by the State Government in this behalf or by the competent authority.

9. Since, in the present case, the Government has already taken possession of the land and it has been handed over to opposite party No. 2 and in view of Sections 11, 12, 13 and 14 of the Principal Act, the writ Petitioners are not entitled to any relief as claimed for. In view of the finding indicated above here in before, the Petitioners grievance has No. merit.

10. So far as W.P.(C) No. 7231 of 2004 is concerned, since Government has taken possession of the land and in view of the fact that Urban Land (Ceiling and

Regulation) Act, 1976 has been repealed by the Urban Land. (Ceiling and Regulation) Act, 1999 and in the repealing Act there is No. saving clause, the Petitioner is not entitled to any relief.

In the result, W.P.(C) No. 1254 and 7231 of 2004 are dismissed.

11. So far as other writ petitions are concerned, since the Government has taken possession of the land and they have allotted the said land to the Housing Board, it is open to the Housing Board to consider the claim of the Petitioners-Association and take a decision for allotment of the land to the said Association in accordance with law within a period of four months from the date of communication of the order.

With the aforesaid observations, O.J.C. No. 13965 of 1999, W.P.(C) No. 4338 of 2002 and W.P.(C) No. 13222 of 2005 are disposed of.