
(2007) 02 OHC CK 0004
In the Orissa High Court

Bhikari Nayak

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Orissa Land Reforms Act, 1960 — Section 51, 51(2)

Citation : (2007) 104 CLT 39 : (2007) 1 OLR 482

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Judgement

A.S. Naidu, J.—The dispute involved in this Writ Petition has a chequered career. It commenced sometime in the year 1976. About Ac.171.98 decimals of land appertaining to plot Nos. 49 and 51 of Khata No. 220 situate in village Bidyadharpur, Cuttack was held to be ceiling surplus in Ceiling Case No. 349 of 1975 initiated in consonance with the provisions of the Orissa Land Reforms Act, 1960 (hereinafter referred to as "the Act"). The said ceiling surplus land vested in the State of Orissa on 1st of April, 1976 free from all encumbrances.

2. Thereafter, it appears, the Petitioner and many others stating to be landless persons filed applications u/s 51 of the OLR Act for settlement of parcels of the said land in their favour. After following the procedures of law, the said ceiling surplus lands were leased out in favour of 171 beneficiaries, the Petitioner being one of them. To be more particular, in OLR Lease Case No. 110 of 1976 Ac.1.00 of land out of the said ceiling surplus land was leased out in favour of the Petitioner by the Addl.Tahsildar (S), Cuttack on being satisfied that the Petitioner was otherwise eligible and he had fulfilled all the criteria as stipulated u/s 51 of the OLR Act. A "Patta" was also issued in his favour.

3. Eight years thereafter, an application was made by the Collector, Cuttack to the Revenue Divisional Commissioner, Central Division, Cuttack, for cancellation of the lands leased out in favour of the Petitioner and others out of the said ceiling surplus land, pointing out certain procedural irregularities. The said application of the Collector was registered as OLR Revision Misc. Case No. 7 of

1984. The Revenue Divisional Commissioner on being satisfied that there were apparent procedural irregularities, allowed the said OLR Revision Misc. Case, set aside all the leases including that of the Petitioner by Order dated 9th May, 1986 and remanded the matter to the Revenue Officer concerned for fresh disposal after making proper enquiries as per the prescribed procedure and observing all paraphernalia. After receiving the said order of the Revenue Divisional Commissioner, the Addl. Tahsildar (S), Cuttack conducted enquiries and after observing all paraphernalia by Order dated 19th June, 1986 arrived at the conclusion that the Petitioner was not eligible for grant of lease of any land out of the aforesaid ceiling surplus land and rejected his application.

4. Being aggrieved by the order of the Revenue Divisional Commissioner dated 9th May, 1986 and the order of the Addl. Tahsildar (S), Cuttack dated 14th August, 1986, the Petitioner approached this Court in OJC No. 4014 of 1992. After hearing the parties, this Court vide Judgment passed on 27-5-1992 was pleased to allow the said OJC and set aside the impugned orders of the Revenue Divisional Commissioner and the Addl. Tahsildar (S), Cuttack. Pursuant to Judgment dated 27-5-1992 passed by this Court the Revenue Officer-cum-Addl. Tahsildar (S), Cuttack by Order dated 2-6-1994 initiated OLR Lease Misc. Case No. 51 of 1992 and directed issue of fresh "Patta" in favour of the Petitioner on the latter depositing the necessary dues, if the same were not paid by him, thereby leasing out Ac.1.00 of land out of the ceiling surplus land in his favour.

5. It is pertinent to mention here that the Judgment dated 27-5-1992 passed by this Court was assailed by the State of Orissa before the Supreme Court by filing SLP No. 3089 of 1999 and Civil Appeal No. 1652 of 2003. It may be noted that altogether seventy SLPs were filed against seventy lease holders. All the SLPs were heard together and disposed by a common Judgment. The Supreme Court was pleased to allow the appeals, set aside the Judgment/order passed by this Court and consequently the fresh lease granted in favour of the Petitioner and others and directed as follows:

Before we part with the case, we may observe that the Revenue Officer/Sub-Divisional Magistrate/Collector directed (sic) initiation of de-novo proceeding and allot the land in accordance with law. The authorities concerned shall give effect to the said order and if the Respondent is found to be eligible for grant of lease, his case may also be considered in accordance with law along with the other eligible persons.

6. In consonance with the aforesaid direction issued by the Supreme Court, the Revenue Officer-cum-Tahsildar (S), Cuttack initiated a proceeding de novo, heard the Petitioner and by Order dated 30th June, 2005 came, to the following conclusions:

(1) It is revealed that the Petitioner is not a permanent resident of the village to which the suit land relates.

(2) Even he is not a permanent resident of Cuttack Sadar Tahsil.

(3) It is further revealed on enquiry that the Petitioner is not a landless person.

(4) The suit land is lying vacant; and

(5) The suit land is ceiling surplus land and its distribution is regulated under the provisions of Section 51 of OLR Act. Sub-Section (2) of Section 51 prescribes the procedure for settlement of such land. As per the provisions of the said sub-Section read with Rule 6(4) of the Orissa Govt. Land Settlement Rules, 1983, no Govt, land shall be settled in urban area for agricultural purposes.

On the basis of the aforesaid conclusions the Tahsildar held that the suit land was not leaseable for agricultural purpose as that was within urban area, and accordingly rejected the prayer of the Petitioner for settlement of the suit land measuring Ac.1.00 in his favour.

7. The order of the Tahsildar (S), Cuttack dated 30th June, 2005 -(Annexure-I) passed in OLR Lease Case No. 110 of 1976 is assailed by Mr. R.C. Das, the Learned. Counsel for the Petitioner, mainly on the ground that all the conclusions supra basing upon which the application of the Petitioner for settlement of the land in question in his favour was rejected were not tenable in law. At the other hand the Tahsildar committed errors apparent on the face of the record and as such the said order Annexure-1 is liable to be quashed.

8. According to Mr. R.C. Das, in consonance with Section 51 of the Act, a landless person of neighbouring village is also entitlement to settlement. This aspect was not kept in mind by the Tahsildar. The finding that the Petitioner was not a permanent resident of Cuttack Sadar Tahsil was criticized relying upon a caste certificate granted by the Tahsildar himself in Misc. Case No. 890 dated 4-11-2004 (Annexure-20) clearly mentioning that the Petitioner "belongs to "PANO" caste/tribe which is recognized as a scheduled caste" and that the Petitioner and his family "ordinarily reside in village Tulasipur of Cuttack district". Further it is submitted that the conclusion of the Tahsildar that the Petitioner was not a landless person was based on no material. In fact no enquiry was conducted and the Petitioner was never given opportunity to satisfy that he was a landless person and as such the aforesaid conclusion was erroneous and not supported by any material on record.

It was further contended that the conclusion of the Tahsildar that the suit land was lying vacant was very much an error apparent on the face of the record. In fact the said land had been illegally transferred to the Cuttack Development Authority and the latter had developed the same by constructing roads, parks, etc. thereon.

So far as the conclusion of the Tahsildar that the suit land being situated in an urban area could not be leased out for agricultural purpose was concerned, Mr. R.C. Das contended that the Notification in that regard was issued by the State only in the year 1983 and the same therefore could not be applied retrospectively. According to him the application of the Petitioner was in the year

1976 and therefore that ought to have been considered according to the rules that were prevailing at that point of time.

9. All the aforesaid contentions of Mr. R.C. Das are strongly repudiated by the Learned Counsel for the State as well as by the Learned Counsel appearing for the Cuttack Development Authority.

It appears that a Land Acquisition Notification had been issued by the State of Orissa for acquisition of the land involved in this case. In view of the specific stand of the State all through that in a Ceiling Surplus Case initiated under the Act, the land, a portion whereof is involved in this case, vested in the State, surprisingly the said land was sought to be acquired by the aforesaid Notification under the Land Acquisition Act which is contrary to the stand taken. Answering to this anomaly, it was submitted that a portion of the ceiling surplus land had been rightly or wrongly leased out in favour of some persons and to avoid future complications, and by way of abundant caution, the State thought it proper to also issue a Notification under the Land Acquisition Act.

10. Be that as it may, fact remains, the ceiling surplus land vested in the State and applications were filed u/s 51 of the OLR Act by many persons including the Petitioner praying for leasing out the same in their favour for agricultural purpose stating themselves to be scheduled caste landless agricultural labourers.

11. Relying upon Section 51(2) of the Act, Mr. S.S. Das, Learned Addl. Govt. Advocate, submitted that the ceiling surplus land vested in the State u/s 45 of the Act were to be settled with persons belonging to SC/ST in proportion to their respective population in the village in which the lands situate and the remaining lands were to be settled with persons not belonging to the aforesaid categories. Sub-Section (2) of Section 51 stipulates that such settlement should be made in the following order of priority:

- (1) Cooperative Farming Societies formed by landless agricultural labourers;
- (2) Landless agricultural labourers of the village in which the land is situated or of any neighbouring village;
- (3) Ex service men or member of armed forces of the Union, if they belong to the village in which the land is situated;
- (4) Raiyats who permanently cultivate not more than one standard acre of contiguous land; and
- (5) In absence of persons belonging to any of the foregoing categories, any other person.

According to Mr. S.S. Das, the Petitioner was not a landless agricultural labourer of the village in which the land is situated, as has been held by the Tahsildar, and as such he was not eligible to be settled with any agricultural land. He further contended that the Petitioner was also not a permanent resident of Cuttack Sadar Tahsil and that the land in question being situated in an urban area could

not be settled for agricultural purpose.

12. Repudiating the aforesaid contention of Mr. S.S. Das, Mr. R.C. Das further reiterated his submission that the Petitioner is a permanent resident of village Tulasipur which is a neighbouring village of Bidyadharpur where the land in question situates, as would be evident from Annexure-20, the caste certificate issued in favour of the Petitioner by the Tahsildar (S), Cuttack and in consonance with the stipulations made under sub-Section (2) of Section 51 of the Act he is eligible to be settled with the land, and the said aspect was not considered by the Tahsildar. He further contended that after issuing the caste certificate in Misc. Case No. 890 dated 4-11-2004, the Tahsildar was estopped from holding that the Petitioner was not a permanent resident of Cuttack Sadar Tahsil and the said observation was apparently an error of record.

13. Assailing the finding of the Tahsildar that the Petitioner was not a landless person, Learned Counsel for the Petitioner further submitted that the said finding was based on no material. The Petitioner was found to be a landless agricultural labourer, not once but twice by the same authority and the disputed land was leased out in his favour. Thus the Tahsildar could not turn back and conclude that the Petitioner was not a landless agricultural labourer. Further observation of the Tahsildar in the order Annexure1 that the suit land was lying vacant, according to the Learned Counsel for the Petitioner, was also not correct in view of the stand taken by the Cuttack Development Authority supra.

14. This Court heard the Learned Counsel for the parties patiently, examined the materials meticulously, noted the submissions carefully and considered the matter diligently.

This Court finds that by Order dated 8-2-2006 notice was directed to be issued to the Opposite Parties and the Addl. Standing Counsel appearing for the State was directed to receive the same. The said order indicated that the matter was likely to be disposed of at the admission stage itself. The Cuttack Development Authority, Opposite Party No. 5, though filed a counter-affidavit, no affidavit whatsoever was filed by the State. It is needless to say that the Cuttack Development Authority is only a beneficiary under the State in whose favour the land disputed in this case has been allotted for the purpose of Bidanasi Housing Scheme. In its counter-affidavit Cuttack Development Authority has averred that after taking over possession of the land, it has spent huge money for providing infrastructure like roads, water-supply, sewerage, electricity supply, parks, etc. It has also leveled the land and has carved out different plots. These facts reveal that the land in question situated in village Bidyadharpur was agricultural land in the year 1975. The same being found ceiling surplus land in Ceiling Case No. 349 of 1975 initiated under the Act, vested in the State since 1st of April, 1976. The Petitioner stating to be a scheduled caste landless agricultural labourer had applied for settlement of one acre of land out of that in the year 1976, vide OLR Lease Case No. 110/1976.

15. More than thirty years have passed in the meanwhile. The lease granted in favour of the Petitioner though set aside by this Court, the Supreme Court directed the Revenue Officer/Sub-Divisional Officer/Collector to initiate a de novo proceeding for allotment of the land of course if the Petitioner would be found to be eligible for grant of lease in accordance with law. Within the span of aforesaid thirty years, there is a sea of changes in situation. Village Bidyadharpur which was in the vicinity of Cuttack City has now been brought within the Cuttack urban area, vide Gazette Notification No. 43612 dated 1-10-1983 issued by the Government of Orissa in the Housing and Urban Development Department. Once a particular area is declared urban area, no land situated therein can be leased for agricultural purpose. Rule 6(4) of the Orissa Government Land Settlement Rules, 1963 also mandates that no Government land in an urban area shall be settled for agricultural purpose. Whether the Petitioner is otherwise eligible for settlement of the land in question or not becomes redundant in view of the aforesaid changed scenario.

16. According to the Learned Counsel for the Petitioner the Petitioner is a scheduled caste landless agricultural labourer and he wants some land for agricultural purpose for his subsistence. The provisions of sub-Section (2) of Section 51 of the Act are beneficial legislation aimed at providing minimum lands necessary to different category of persons catalogued therein, in order of priority, but then, with the sole aim and object of providing them some subsistence for earning their living by agriculture. By efflux of time the said benefit cannot be achieved from the land in dispute due to its inclusion in Urban area which has changed its nature and character. That apart, the Petitioner is not in possession of the land. He has in fact no right to claim any particular land to be settled with him in consonance with Section 51 of the OLR Act. For such reasons, the land in question which is situated in urban area cannot be leased out in favour of the Petitioner for agricultural purpose and the Writ Petition is bound to fail on that ground alone.

17. However, the Petitioner asserts that he is a scheduled caste landless agricultural labourer. But then he can have no choice for any particular land. Therefore this Court feels that if he satisfies the criteria stipulated u/s 51(2) of the Act, it will be open to the authorities concerned to consider his application and to take a decision as to whether any agricultural land situated in the vicinity, of the village where he is residing can be leased out/settled in his favour, of course strictly in consonance with law.

18. Therefore, without entering into the arena of controversy as to whether the Petitioner is eligible for settlement of the land in question in consonance with Section 51(2) of the Act, this Court disposes of the Writ Petition with the aforesaid direction to the Tahsildar (S), Cuttack to consider the application afresh keeping in mind the observation/direction made in this Judgment expeditiously.