

(2023) 08 OHC CK 0213
In the Orissa High Court
Case No : Writ Petition (C) No. 21417 Of 2017

Bipin Bihari Hazira

APPELLANT

Vs

Tahasildar, Chandabali And Others

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Government Land Settlement Act, 1962 — Section 5B

Citation : (2023) 08 OHC CK 0213

Hon'ble Judges : Dr. B.R. Sarangi, J; Murahari Sri Raman, J

Bench : Division Bench

Advocate : S.K. Nayak 2, Kintara, S.S.K. Nayak, A. Behera, G.C. Roy, K. Behera, S.K. Panda, A.K. Mishra, Goutam Mishra, A. Dash, J.R. Deo, A. Khandai

Final Decision : Disposed Of

Judgement

Dr. B.R. Sarangi, J

1. The petitioner, by way of this writ petition, seeks to quash the order dated 03.03.2017 passed in Khashmahal Case No. 01 of 2016 under Annexure-4, by which the Tahasildar, Chandabali has dropped the said case by recording that as the case land has been transferred to A.J.A. (Abad Jogya Anabadi) Khata for inability of parties to produce relevant document, it cannot be settled.

2. The factual matrix of the case, in brief, is that the land in question situated in Chandabali village under khata no.127, plot no.517, measuring an area Ac.0.13 decimals and plot no.516 measuring an area Ac. 0.04 dec. totalling an area of Ac. 0.17 dec. was under the possession of the grandfather of the present opposite party nos. 2 to 5, namely, Late Hari Hazira. The possession over the case land by Hari Hazira stands reflected in the Khashmahal register. After the death of Hari Hazira, his son Late Bichitra Nanda Hazira, who is the father of present opposite party nos. 2 to 5, was in continuous and uninterrupted possession over the said land. During his life time, the father of present opposite party nos. 2 to 5 had constructed a residential house consisting of 17 rooms, out

of which 6 rooms had been used by him and his family members and the rest rooms had been let out to different persons. The father of opposite party nos. 2 to 5, being a landless person, had been maintaining himself and his family members from out of the rent collected from the tenants, as he had no other source of income excepting that. After the death of the father of the present opposite party nos. 2 to 5, opposite party nos. 2 to 5 inherited the possession by way of succession over the case land, as it was possessed by their father, which had been duly verified and enquired by the Revenue Inspector, Chandabali. The case of the petitioner is that the land in question should have been settled in his favour, as the same is a Khasmahal land, which was in occupation of his grandfather, namely, Late Hari Hazira. But, as the petitioner could not produce any documents before the authority and the land was transferred to A.J.A. Khata for inability of parties to produce relevant document, the land could not be settled and the proceeding so initiated was dropped. Hence, this writ petition.

3. Mr. S.S.K. Nayak, learned counsel appearing for the petitioner contended that the petitioner has a right to claim the benefit as the land in question, i.e., sabik plot no.589 measuring an area of Ac. 0.13 decimal, plot no. 590 measuring an area of Ac. 0.2 decimal, plot no. 591 measuring an area of Ac. 0.2 dec., i.e., in total Ac. 0.17 dec. under sabik khata no. 40 of Mouza Chandabali in the district of Bhadrak, is a Khasmahal land and it was leased out by the Tahasildar in the name of Khetrabasi Sahoo and said Khetrabasi Sahoo sold the said land to one Hari Hazira, who was the common ancestor of the petitioner and opposite parties 2 to 5 through R.S.D. No. 531 dated 12.07.1993. By virtue of amicable arrangement between Shakidutta Khan, Bhallava Nath, Hari Hazira, Giridhari Majhi, the said sabik plot was possessed by Hari Hazira. After death of Hari Hazira, his son Padmanava Hazira (father of the present petitioner) inherited the said sabik plot. Similarly, after death of Padmanava Hazira, Bichitra Hazira and Bipinbihari Hazira inherited the said sabik plot. Now Bichitra Hazira is dead. Bipinbihari Hazira and the legal heirs of Bichitra Hazira who are the present opposite parties 2 to 5 are in possession over the said Sabik land. During the Hal settlement operation the above Sabik plots became Hal plot nos. 517 & 516 under Hal Khata No.127. But that Hal plots wrongly recorded under "Abad Jogya Anabadi" khata, though the name of Hari Hazira, who was common ancestor of petitioner and opposite party nos. 2 to 5, has been recorded in the remark columns and Kisam of land has been recorded as Gharabari-1. Therefore, the petitioner filed an application on 17.11.2016, which was registered as Khasmahal Case No.01/2016 for settlement the suit plot in his name and the names of his co-sharers, who are the present opposite parties 2 to 5. But the Tahasildar dropped the said Khasmahal Case on 03.03.2017. Thereby, the Tahasildar has committed gross illegality and irregularity, for which the petitioner has approached in the present writ petition. It is further contended that Section-5 B of Orissa Government Land Settlement Act provides that, if any Khasmahal land has been occupied prior to 26.02.2006 and used for homestead purpose, it shall be settled in favour of occupier by the Tahasildar in the manner prescribed in

Schedule-V of O.G.L.S. Act. But here the Tahasildar, without going through the above provision, has simply dropped the said Khasmahal case on the ground that the said suit plot has been recorded under A.J.A. Khata. Therefore, the petitioner has approached this Court in the present writ petition.

4. Mr. A.K. Mishra, learned Addl. Advocate vehemently contended that in view of the letter of Revenue Inspector dated 25.11.2010, which has been placed on record as Annexure-A/2, so far as plot No. 516 is concerned, the same has been recorded as Gharabari-1 measuring an area of Ac. 0.04 decimal and in the remark column it has been mentioned that the same is under unauthorised occupation of Prafulla Kumar Sahu, Amulya Chandra Sahu, Binod Kumar Sahu, Kumud Chandra Sahu, Subodh Kumar Sahu, Prabodh Kumar Sahu, Golak Chandra Sahu, S/o Chintamani Sahu, Antaryami Sahu, Purnananda Sahu S/o-Yudhistir Sahu and Niranjan Sahu, S/o Suresh Sahu. So far as Plot No. 517 is concerned, the same has been recorded as Gharabari-1 measuring an area of Ac. 0.13 decimal, which has been recorded in the name of Hari Hazira, S/o-Purastam Hazira. Therefore, there are two separate plots and two separate areas and two sets of persons are in occupation. Consequentially, the settlement has to be done on the basis of the occupation of the persons mentioned in the report of the R.I. As none of the parties have produced any material to establish their claim to settle the plot in their favour, ultimately, the Tahasildar dropped the same. Therefore, there is no illegality or irregularity committed by the authority in passing the order impugned, so as to cause interference by this Court at this stage.

5. Mr. Jyoti Ranjan Deo, learned counsel appearing on behalf of opposite parties 2 to 5 contended that they being the legal representatives of deceased Bichitrnanda Hazira, who happens to be the son of Hari Hazira, in whose favour the plot has been recorded as per the report of the Revenue Inspector under Annexure-B/2, the same should have been settled in their favour being Khasmahal land. It is further contended that they are in possession of the land for more than 50 years and also produced the relevant documents for recording of the land in their favour. He further contended that by dropping the proceeding, the Tahasildar has committed an error apparent on the face of record and, therefore, the matter should be remitted back to the Tahasildar for reconsideration by affording opportunity of hearing to all the parties. In support of his contention, he has placed reliance on the judgment of the apex Court in the case of New Okhla Industrial Development Authority v. Kendriya Karmachari Sahkari Grih Nirman Samiti, (2006) 9 SCC 524 and also of this Court in the case of Nirmal Chandra Panigrahi v State of Odisha, 2021 SCC OnLine Ori 807, in which one of us (Dr. Justice B.R. Sarangi) was a member.

6. This Court heard Mr. S.S.K. Nayak, learned counsel for the petitioner; Mr. A.K. Mishra, learned Addl. Government Advocate for the State; and Mr. J.R. Deo, learned counsel appearing for opposite parties no.2 to 5 in hybrid mode and perused the records. Pleadings have been exchanged between the parties and

with the consent of learned counsel for the parties, the writ petition is being disposed of finally at the stage of admission.

7. It is an admitted fact that the opposite parties no. 2 to 5 are in possession of the land appertaining to plot no. 517 under Hal khata no.127 measuring an area of Ac. 0.13 dec. and Plot No. 516 measuring an area of Ac. 0.04 dec. totalling an area of Ac. 0.17 dec. But fact remains, as per the report of the R.I., so far as plot no. 516 measuring an area of Ac. 0.04 dec. is concerned, the same has been recorded as Gharabari-1 and in the remark column it has been mentioned that the same is in unauthorised occupation of Prafulla Kumar Sahu, Amulya Chandra Sahu, Binod Kumar Sahu, Kumud Chandra Sahu, Subodh Kumar Sahu, Prabodh Kumar Sahu, Golak Chandra Sahu, S/o- Chintamani Sahu, Antaryami Sahu, Purnananda Sahu S/o- Yudhistir Sahu, Niranjan Sahu, S/o- Suresh Sahu. So far as plot no. 517 measuring an area of Ac. 0.13 dec. is concerned, the same has been recorded as Gharabari-1. The said plot stands recorded in the name of Hari Hazira, S/o-Purastam Hazira. Therefore, if it is a Khasmahal land, then in that case the authorities are to proceed in accordance with law, keeping in view the principle decided by this Court in the case of Nirmal Chandra Panigrahi (supra). In the said case, reference has also been made to the case of Sankarlal Verma and others v. Smt. Uma Sahu and others, 1993 (I) OLR 187; Sourindra Narayan Bhanja Deo v. Member, Board of Revenue, Orissa, 98(2004) CLT 397 Vishnu Deo Roy v. Rajesh Kumar Tiwari, 2018(I) OLR 31 and Rajat Kumar Rath v. Collector, Cuttack (W.P.(C) No.3674 of 2005 disposed of on 18.04.2005). Consequentially, this Court remanded the matter.

8. Applying the said ratio to the present case, it is made clear that the Tahasildar, Chandabali, who is a public authority, has failed to exercise its power in accordance with the Statute. Therefore, in exercise of the power conferred under Article 226 of the Constitution of the India, this Court is of the considered view that let the Tahasildar, Chandabali apply its mind and pass appropriate order in accordance with law.

9. In the above of the matter, the order dated 03.03.2017 passed by the Tahasildar, Chandabali in Khasmahal Case No. 1 of 2016 under Annexure-4 is hereby quashed and the matter is remitted back to the Tahasildar, Chandabali to adjudicate Khasmahal Case No. 1 of 2016 afresh by affording opportunity of hearing to all the parties and conclude the same as expeditiously as possible, preferably within a period of six months from the date of communication of the judgment.

10. The writ petition stands disposed of accordingly. However, there shall be no order as to costs.

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