

(2008) 05 OHC CK 0012
In the Orissa High Court
Case No : O.J.C. No. 4140 of 1991

Centre for Development Education and Communication and Another APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Citation : (2008) CLT 336 Supp : (2008) 2 OLR 606 Supp : (2008) OLR 336 Supp

Hon'ble Judges : Sanju Panda, J;I.M. Quddusi, J

Bench : Division Bench

Advocate : R.K. Mohanty, D.K. Mohanty, S.K. Jena, S. Mohanty, S.N. Biswal, A.P. Bose, S.K. Mohanty and M.R. Dash, for the Appellant; A.N. Routray, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—The Centre for Development Education and Communication is allegedly a voluntary organization which is in existence since 1984 and concentrates mainly on activities covering education and communication. As part of its educational activities, it is engaged in health, sanitation, personal hygiene, water use, child rearing etc. and encourages the children to go to school. It works for the handicaps, helps working mothers, orphans, destitutes and others. In order to establish a communication college for teaching and training communications in rural areas which would cover areas of social work, social philosophy, communication methodology, print media analysis and social communication, it applied to the State Government for allotment of at least Ac. 5.00 of scheduled land in Bhubaneswar vide its application dated 7.10.1989. The Joint Secretary-cum-Ex-Officio Director of Estates vide letter dated 16th November, 1989 intimated the President of the Petitioner that the proposal for allotment of land should come through the Secretary, CD. & R.R. Department and they have to furnish the other details regarding sources of finance and actual requirement of land to the department. Thereafter, the application was moved

fulfilling the aforesaid conditions. Ultimately, the State Government vide letter dated 19.1.1990 issued by the Director of Estates and Ex-officio Deputy Secretary to Government, General Administration Department, allotted land measuring Ac. 3.03 appertaining to Plot No. 2 drawing No CE-56/88 (Pt.) in village Nayapalli layout plan of Chandrasekharpur in favour of the Petitioner for establishment of Communication College and training center for development and communication of health, sanitation, children's problem and of handicaps etc. with the condition that (1) the land shall be used for construction of the said institution for development and communication of health, sanitation, children's problem at Bhubaneswar; (2) the construction shall be made as per the plan to be approved by the competent authority and completed in all respect within 36 months from the date of allotment; (3) the land shall be exclusively utilized for the purpose for which it is allotted and not for any other purpose; (4) the land shall be demarcated on the field by the representative of General Administration Department on request; (5) in the event of closure/defunctioning of the institution, the land with development thereon shall revert to the Government in appropriate Department administering Government land at Capital and (6) the ground rent of Rs. 455.00 ? Rs. 150.00 per acre per annum is to be paid by the allottee. Consequently, the lease deed was executed in the name of the Governor of Orissa in favour of the President of Petitioner No. 2 on 24.1.1990 free of premium.

2. Sub-clauses (iii) & (xiii) of Clause 2 of the lease deed provided as under:

(iii) That he shall, at his own expense and with the previous permission in writing of the lessor, erect upon the land leased in a substantial and workmanlike manner with now and sound materials and to the satisfaction of the lessor or his authorized representative, a building with all requisite and proper walls, sowers, drains and other conveniences as shall be approved by the lessor or his authorized representative, he shall complete the same in all respects fit for occupation within thirty six months from the date hereof or within such further time, if any as lessor may allow.

(xiii) That the lessee shall keep in tact and well defined, the boundaries of the holding and/shall point them out for inspection when required by the lessor to do so to any officer or person duly authorized by him, in writing in that behalf.

However, all on a sudden, the Director of Estates vide letter dated 21.12.1990 cancelled the lease deed and informed the Petitioner to execute a surrendered lease deed in respect of the land as per the forms enclosed with the letter within thirty days from the date of receipt of that letter.

3. In the counter affidavit, it has been indicated that the Petitioner without obtaining physical possession of the land and without approval of building plan, raised construction unauthorisedly. Therefore, Government-reviewed the allotment and pleased to cancel the lease granted to the Petitioner.

4. We have perused the records produced by the learned State Counsel and found that no reason was assigned for cancellation of the lease deed and no opportunity was given to the Petitioner to show cause.

5. Since under the lease deed, the land was settled in favour of the Petitioner, in our opinion from the date of execution of the lease deed the Petitioner became the lessee of the land and the lease deed conferred right as lessee on the Petitioner from the date of execution of the same. Therefore, from the date of execution of the lease deed, the Petitioner had a right to raise construction etc. in fulfilling the conditions of the lease.

6. Learned Counsel for the Petitioner has pointed out that the State Government vide Government order dated 23.5.1977 have been pleased to decide the principle for allotment of Government land to educational institutions either free of premium or on payment of concessional premium according to which M.E. School is to be allotted land not exceeding two acres in urban area and not exceeding three acres in rural area, secondary schools not exceeding three acres in urban area and not exceeding five acres in rural area and Colleges not exceeding ten acres in urban area and not exceeding fifteen acres in rural area.

7. In view of the above mentioned facts and circumstances, we see no justification for cancellation of the lease deed. However, since the lease deed was cancelled, the Petitioner was not in a position to raise construction according to the terms and condition of the lease deed. Therefore, the Petitioner is required to be given reasonable time to raise construction in accordance with the terms and conditions of the lease deed.

8. Accordingly, we allot this writ petition and quash the impugned cancellation order and direct the opposite parties to allow the Petitioner reasonable time to fulfill the terms and conditions of the lease deed. However, this will not preclude the opposite parties to realize rent for the land in question.

Sanju Panda, J.

9. I agree.