
(2010) 04 OHC CK 0048
In the Orissa High Court

Chandan Kumar Sethi and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 05-04-2010

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7A(3)
Orissa Government Land Settlement Rules, 1974 — Rule 3(3), 3(5)
Orissa Land Reforms Act, 1960 — Section 22(1), 22(4)

Citation : (2010) 2 OLR 41

Hon'ble Judges : V. Gopalagowda, C.J;B.K. Patel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

B.K. Patel, J.—The petitioners in this writ application have made prayer to quash the order dated 13.8.1987 under Annexure-4 passed by opposite party No. 2, the Additional District Magistrate, Bhubaneswar in R.C. No. 220 of 1987 and to direct opposite party No. 3, the Tahasildar, Bhubaneswar to accept the arrear revenue in respect of disputed parcels of land from the petitioners and to mutate the same in their favour.

2. Order under Annexure-4 was passed by the learned Additional District Magistrate, Bhubaneswar in exercise of power u/s 7A(3) of the Orissa Government Land Settlement Act, 1962 (for short "the Act") cancelling the lease granted by the Tahasildar, Bhubaneswar in favour of opposite party No. 5, Netrananda Deuli in respect of land measuring Acs. 2.000 in plot No. 778 under Khata No. 207 in mouza Sundarpur by order dated 18.9.1974 in W.L. Lease Case No. 1626 of 1974. It is the case of the petitioners that the original lessee being in requirement of funds, after necessary permission accorded u/s 22(1)(b)(4) of Orissa Land Reforms Act, 1960 in Revenue Misc. Case No. 234 of 1984, transferred the entire lease hold land and delivered possession thereof to opposite party No. 6, Batakrushna Panda vide Registered Sale Deed No. 9272 dated 25.10.1985. Opposite party No. 6 got the land mutated in his name vide

order dated 25.2.1994 passed in Mutation Case No. 483 of 1994 under Annexure-1. Subsequently, opposite party No. 6 transferred disputed parcels of land to the petitioners under the four registered sale deeds dated 3.3.1998 under Annexure-2 series. The petitioners are continuing with peaceful possession over the lands sold to them, but they could not get the lands mutated in their names due to revival of survey and settlement operation in the area as per notification of the State Government dated 22.10.2005 under Annexure-3, which had the effect of ouster of jurisdiction of the Tahasildar to effect mutation. Instead, the petitioners took steps in the office of opposite party No. 4, Asst. Settlement Officer Bhubaneswar for mutation of the lands in their names and came to know regarding cancellation of lease under Annexure-4. Since opposite party No. 3 had allowed mutation of the lease hold land in favour of opposite party No. 6 in the year 1994, without disclosing about cancellation of lease in the absence of opposite party No. 6, after obtaining copies of necessary documents the petitioners filed the writ application.

3. It was contended by learned Counsel for the petitioners that as no notice of the cancellation proceeding in R.C. No. 220 of 1987 was issued to opposite party No. 6, the petitioner's vendor, who was the affected person at the time of cancellation of lease, there has been violation of mandatory provision u/s 7A(3) of the Act. It was further submitted that order of cancellation under Annexure-4 reveals that the main ground for cancellation of the lease was alleged non-compliance of provisions under Sub-rules (3) and (5) of Rule 3 of Orissa Government Land Settlement Rules, 1974 by the learned Tahasildar while conducting enquiry for the purpose of grant of lease. It was contended that lease in question was granted on 18.9.1974 when Orissa Government Land Settlement Rules, 1963 were in force. Orissa Government Land Settlement Rules, 1963 were repealed by the Orissa Government Land Settlement Rules, 1974 brought into force w.e.f. 11.12.1974. Therefore, the lease could not have been declared invalid on the ground of non-compliance of provisions under Orissa Government Land Settlement Rules, 1974.

In support of his contentions learned Counsel for the petitioners relied upon a recent decision of this Court passed in W.P.(C) No. 19517 of 2008 in the case of Sri Nrusingh Sahoo and Anr. v. State of Orissa and Ors. as well as two other reported decisions of this Court in Madhuchhanda Das Vs. State of Orissa and Others, and in Smt. Bidyut Mishra Vs. State of Orissa and Others, .

4. Learned Government Advocate, in defending the order under Annexure-4, contended that the petitioners came into picture when four plots of land out of the lease hold land were sold to them by their vender opposite party No. 6 on 3.3.1998 only. Lease hold land was transferred to opposite party No. 6 by the original lessee opposite party No. 5 on 25.10.1985 and the impugned order of cancellation was passed on 13.8.1987. Therefore, the petitioners were not the affected parties to whom notice was required to be issued by the learned Tahasildar. The petitioners have no locus standi to assail the impugned order of

cancellation.

5. Sub-section (3) of Section 7A of the Act provides as follows:

(3) 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 a reasonable opportunity of being heard in the matter:

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

6. On perusal of the impugned order under Annexure-4 passed in R.C. No. 220 of 1987, it appears that opposite party No. 5 the original lessee was the only opposite party before the learned Additional District Magistrate. Though opposite party No. 5 had already sold the lease hold land to opposite party No. 6 after obtaining permission, it is evident that opposite party No. 6 was not given any opportunity of being heard in the matter of cancellation. It was held by the learned Additional District Magistrate that sanction of lease suffered from several defects such as enquiry had not been caused properly by the Tahasildar as required under Rule 3(3) of Orissa Government Land Settlement Rules, 1974 and proclamation inviting objections had not been properly served under Rule 3(5) of the said Rules. It was also pointed out that the places and the period of publication of the proclamation were not in conformity with the said Rules.

7. In the case of Smt. Bidyut Mishra v. State of Orissa, through the Secretary to Govt., Revenue Department and Ors. (supra), lease had been granted on 9.10.1975. Original lessee transferred the lease hold land to the petitioners' vendor on 30.1.1985 and petitioners' vendor sold the land to the petitioner on 6.12.1985 under registered sale deeds. Lease was cancelled without notice to the petitioner by order dated 25.7.1989. In such circumstances, it was held that notice having been issued only to the original lessee and not to the holder of title in actual possession, order of cancellation passed u/s 7A(3) of the Act was invalid. It was observed that the settled position of law is that registration itself is a notice of transfer to the State Government.

In the case of Sri Nrusingh Sahoo and Anr. v. State of Orissa and Ors. (supra), the original lessee sold the leasehold land to the petitioners on 18.11.1981 and the lease was cancelled on 24.7.1989 without notice to the petitioner. In such circumstances, it was held that in the absence of notice to the petitioners, who were the real affected parties, order of cancellation, being contrary to the first proviso to Section 7A(3) of the Act, was not sustainable.

8. In the case of *Gopaldas Agrawal Vs. State of Orissa and Others*, , also it was held that order of cancellation of lease passed without causing any notice on the petitioner who had purchased the land from the original lessee suffered from rigour of first proviso to Section 7A(3) of the Act.

9. In the decision of *Ram Narayan Mohanty Vs. State of Orissa and Others*, , during pendency of an application filed by the original lessee for granting permission to transfer the lease hold land to the petitioner, lease was cancelled without notice to the petitioner. It was held that principle of natural justice required that a chance should have been given to the petitioner whose interest was likely to be affected by cancellation of lease.

10. In the present case, admittedly, petitioners purchased the land from their vendor opposite party No. 6 long after the lease granted to opposite party No. 5 was cancelled. However, petitioners' vendor opposite party No. 6 had purchased lease hold land from original lessee opposite party No. 5 before the impugned order was passed after obtaining permission under Orissa Land Reforms Act, 1960. Therefore it was incumbent upon the learned Additional District Magistrate to give an opportunity of being heard to petitioners' vendor opposite party No. 6 by issuing notice in R.C. No. 220 of 1987. It is also curious to note that inspite of passing of the order of cancellation of lease by the impugned order on 13.8.1987, lease hold land was mutated by correction of records of rights in favour of petitioners' vendor. Order dated 25.2.1994 under Annexure-1 reveals that the petitioners' vendor was found to be in physical possession on the lease hold land. Thus, it is evident that learned Additional District Magistrate did not conduct any enquiry to find out as regards the persons who were likely to be affected by cancellation of lease. As a result of such omission, the petitioners, who are bonafide purchasers from their vendor opposite party No. 6, have ultimately been affected. In such circumstances, we find that the impugned order dated 13.8.1987 having been passed by the learned Additional District Magistrate, Bhubaneswar without notice to the petitioners' vendor opposite party No. 6 is violative of the mandate under the first proviso to Section 7A(3) of the Act.

11. The second contention raised on behalf of the petitioners as regards erroneous application of provisions under Orissa Government Land Settlement Rules, 1974 stated to have been violated in granting lease to opposite party No. 5 also appears to be not unfounded. Orissa Government Land Settlement Rules, 1974 was brought into force w.e.f. 11.12.1974. Therefore, the lease granted on 18.9.1974 could not have been cancelled for non-compliance of provisions to Sub-rules (3)(5) of Rule 3 of the said Rules. In similar circumstances it was held in *Madhuchhanda Das v. State of Orissa and Ors.* (supra) that lease could not have been declared invalid for non-compliance of non-existent Rules by the Tahasildar and the order of cancellation of lease was quashed. Ratio of the said decision squarely applies to the present case.

12. In view of the above, the impugned order under Annexure-4 is quashed. The

matter is remanded to the opposite party No. 2 for fresh disposal in accordance with law after affording opportunity of being heard to the affected parties. It is made clear that we have expressed no opinion regarding validity of grant of lease to opposite party No. 5. Also, we direct the petitioners not to alienate or create encumbrance or to change the nature or character of the case land till fresh order is passed in response to this judgment.

Accordingly, the writ application is allowed.

V. Gopalagowda, C.J.

13. I agree.