
(2010) 04 OHC CK 0007
In the Orissa High Court

Chandra Sekhar Prasad Sharma

APPELLANT

Vs

The Revenue Divisional Commissioner and Another

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Orissa Government Land Settlement Rules, 1983 — Rule 8(1)
Orissa Prevention of Land Encroachment Act, 1972 — Section 8A
Orissa Prevention of Land Encroachment Rules, 1985 — Rule 15(5), 16

Citation : (2010) 110 CLT 253

Hon'ble Judges : B.N. Mahapatra, J;A.S. Naidu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.N. Mahapatra, J.—Challenge in this Writ Petition is made to the Order Dated 07.1.2006 passed by The Tahasildar, Barbil (O.P. No. 3) in Encroachment Case No. 819/88-89 (Annexure-2) & Order Dated 24.11.2000 passed by the Sub-Collector, Champua (O.P. No. 2) under Annexure-3. Opp. Party No. 3 in his order passed under Annexure-2 held that settlement of land in question in favour of the Petitioner alone u/s 8-A of the Orissa Prevention of Land Encroachment Act, 1972 (for short, "the Act 1972") would be illegal as the brother of the Petitioner, namely, Ramanath Sharma is the encroacher of the said land. Opp. Party No. 2 in his order passed under Annexure-3 directed Opp. Party No. 3 to ascertain the whereabouts of Ram Nath Sharma first, & if the Petitioner was still showing his readiness to pay the market value of the case land, then his statement should be recorded to that effect. The further prayer of the Petitioner is for a direction to Opp. Party No. 3 to fix the rent in respect of the land in question & to correct the ROR thereof in favour of the Petitioner in terms of Section 8-A of the Act, 1972 on payment of statutory deposit within a stipulated period.

2. This case has a chequered history. According to the Petitioner, he is poor & landless person & is in possession of a piece of Government land measuring an area of Ac 0.015 decimals pertaining to Hal Plot No. 1240, Khata No. 488 of

village Barbil-7, Mouza : Barbil in Keonjhar District. The land in question has been in continuous possession of the Petitioner since 50 years after his forefathers. In the year 1965, an encroachment proceeding was initiated against the paternal uncle of the Petitioner, which was eventually dropped vide Order Dated 31.07.1975. After the death of his father, till date the land in question is in occupation of the Petitioner which is well known to all concerned including Opp. Parties. The Petitioner had started a hotel in a portion of the land in question & is utilizing the other portion for residential purpose. The Petitioner Had no other source of income except the hotel & his annual income is less than Rs. 10,000. The Petitioner made a grievance petition to the Collector, Keonjhar in Misc. Case No. 3 of 1995 which was disposed of vide Order Dated 18.03.1996 with an observation that the Petitioner was a deserving person for settlement of the land in question in favour of the Petitioner u/s 8-A of the Act, 1972 & accordingly, Opp. Party No. 3 was directed to take follow up actions in terms of the said order within a period of 4 months from the date of receipt of the order in accordance with law. Since no action was taken by the concerned authorities for settlement of the land in question, the Peitioner approached this Court in O.J.C. No. 8258 of 1999 which was disposed of at the stage of admission with a direction to the Sub-Collector, Champua, Opp. Party No. 2 to take necessary steps within 4 months from the date of receipt of the order. Pursuant to the aforesaid direction of this Court, the Opp. Party No. 2 called for a report from the Tahasildar, Opp. Party No. 3 who in turn submitted a report stating therein that the Petitioner was not in possession over the land in question for more than 30 years & he was neither homeless person nor a poor man & was running a hotel in the land in question. On the basis of the report of the Opp. Party No. 3, the Learned Sub-Collector, Opp. Party No. 2 held that it was not a fit case to deal with u/s 8-A of the Act, 1972 & Rule 15(5) of the Orissa Prevention of Land Encroachment Rules, 1985 (for short "the Rules, 1985"). Accordingly, the proceeding was dropped vide Order Dated 04.01.2000. Being dissatisfied with the order of the Opp Party Nos. 2 & 3, the Petitioner approached the Additional District Magistrate, Keonjhar in Revision Case No. 2 of 2000 & the A.D.M. vide Order Dated 22.04.2000 remanded the matter back to Opp. Party No. 3 with a direction to re-examine the financial condition of the Petitioner, total length of the land held by him, length of possession over the land in question & to dispose of the proceeding as per law within two months from the date of receipt of the order. Pursuant to the aforesaid order of the Additional District Magistrate, Keonjhar, Opp. Party No. 3 conducted a fresh enquiry & furnished a report to the Opp. Party No. 2 holding that the annual income of the Petitioner is Rs.20,000 approximately & he is in possession of the land in question measuring Ac 0.010 decimals since 1977. The Petitioner does not have any land in his name. However, the Additional District Magistrate instead of settling the land in favour of the Petitioner as per the provisions of Section 8-A of the Act, 1972 directed Opp. Party No. 3 to settle the land in question in favour of the Petitioner under Rule 8(1) of the Orissa Government Land Settlement Rules, 1983 vide Order Dated 17.02.2001.

Being dissatisfied, the Petitioner again approached this Court in O.J.C. No. 4282 of 2001 which was disposed of on 11.12.2001 at the stage of admission with a direction to Opp. Party No. 2 to pass necessary orders in accordance with law & to initiate a proceeding under the correct statute for settlement of the land in favour of the Petitioner within two months from the date of communication of the said order. Thereafter the Opp. Party No. 3 submitted a report along with records of Encroachment Case No. 819 of 1988-89 before Opp. Party No. 2 reporting that the Petitioner was undisputedly in possession over the land in question for more than the statutory period & he being a homeless person, the land should be settled in his favour on payment of the statutory: amount in accordance with law. Opp. Party No. 2 vide Order Dated 26.08.2006 (Annexure-1) returned the case record to Opp. Party No. 3 with a direction for assessment & correction of rent as admissible & prescribed under the Act, 1972 & Rules, 1985 & to issue ROR in favour of the Petitioner after all formalities. The Opp. Party No. 3 instead of taking necessary steps for assessment of the rent, passed Order Dated 07.11.2006 (Annexure-2) holding that the settlement of land in question in favour of the Petitioner alone u/s 8-A of the Act, 1972 would be illegal as the brother of the Petitioner, Ram Nath Sharma was also an encroacher of the same land & the land should be settled in the name of both the brothers. With these observations, Opp. Party No. 3 resubmitted the case records before Opp. Party No. 2 for appropriate direction. The Opp. Party No. 2 vide his Order Dated 24.11.2006 (Annexure-3) held that Opp. Party No. 3 was correct to report that the land in question should not be settled in favour of the Petitioner alone & at first the whereabouts of the brother of the Petitioner Ram Nath Sharma should be ascertained. It is further observed that the order of settlement was issued in obedience to the direction of this Court in O.J.C. No. 4282 of 2001 that if the Petitioner is still ready to pay the market price of the land, his statement should be recorded in writing & it should be verified as to whether the order is appealable even after passing of the order by this Court & rent should be fixed after compliance of the aforesaid direction. Being dissatisfied with the orders under Annexures-2 & 3, the Petitioner has filed the present Writ Petition.

3. Mr. S.P. Mishra, Learned Counsel appearing on behalf of the Petitioner vehemently argued that the actions of the Opp. Parties are evidently mala fide & colourable exercise of statutory powers available under the provisions of the Act, 1972 in gross violation of the orders passed by this Court from time to time in different Writ Petitions. The Petitioner is deprived of his constitutional right over the land in question for no justifiable reason. The Tahasildar has no jurisdiction to give any opinion that runs contrary to its earlier opinion after settlement of the land in favour of the Petitioner. Opp. Party No. 3 is required to carry out. the direction of Opp. Party No. 2. Opp. Party No. 2 is also equally wrong to accept the view of the Opp. Party No. 3. The brother of the Petitioner has never come forward for settlement of the land in question in his favour nor has he claimed possession thereon at any point of time. The encroachment proceeding has been initiated against the Petitioner & the Petitioner alone has been prosecuting the

same for settlement of the land in question in his favour. At no point of time, Opp. Party No. 3 has opined that the brother of the Petitioner is also in possession or entitled to settlement of the land in question along with the Petitioner. The Petitioner therefore, had submitted a representation before Opp. Party No. 1 on 08.04.2007 (Annexure-4) praying for a direction for early correction of ROR in his favour & fixation of rent in respect of the land in question.

4. Mr, Mishra, Learned Addl Government Advocate appearing on behalf of Opp. Parties submitted that the Encroachment Case No. 819 of 1988-89 was instituted against Ram Nath Sharma & Chandra Sekhar Prasad Sharma, sons of Gorekh Maharaj of Barbil for unauthorized encroachment of Government land pertaining to Khata No. 488, Plot No. 1240 of an area Ac 0.010 decimals in Mouza-Barbil-7. The said land is covered under Barbil Municipal Area for which the land is not leaseable in nature as it is kept under "D" category. In the approved master plan, it is meant for public auction. The Petitioner is not a homeless person & not in continuous & uninterrupted possession of the land in question. As the encroachment case was originally initiated against Ram Nath Sharma & Chandra Sekhar Prasad Sharma, the Sub-Collector remanded the case to the Tahasildar, Barbil on 24.11.2006 to ascertain the whereabouts of Ram Nath Sharma & for assessment of rent & re-submission of the same. At this stage, since the Petitioner has filed this Writ Petition, no further action has been taken in Encroachment Case No. 819 of 1988-89. Earlier, the Petitioner filed a Misc. Case No. 3 of 1995 before the Additional District Magistrate, Keonjhar against the order of eviction. Learned Additional District Magistrate remanded the case with an instruction to examine the case for settlement as per Rule 15, Sub-rule (5) of the Rules, 1985. Pursuant to the order of the Additional District Magistrate, field enquiry was conducted afresh through local Revenue Inspector & it was found that the Petitioner was not in continuous & uninterrupted possession over the land in question. It was further found that the Petitioner was neither homeless nor a poor man but was running a hotel. The names of both the encroachers (Petitioner & his brother) have been reflected in various documents. Subsequently, however, the name of Ram Nath Sharma has been omitted in most of the orders passed by the various Courts. Therefore, the settlement of the case land only in favour of Chandra Sekhar Prasad Sharma ignoring the name of other encroacher Sri Ram Nath Sharma may be unlawful & violation of statutory provisions & principles of natural justice. This view of Opp. Party No. 3 has been accepted by Opp. Party No. 2. Moreover since the Petitioner concealed the fact regarding other encroacher namely Ram Nath Sharma, on this ground alone the Writ Petition is liable to be rejected for suppression of material facts.

5. In paragraph-23 of the Writ Petition, the Petitioner averred that the encroachment proceeding has been initiated against the Petitioner. On the contrary, Opp. Party No. 3 referring to as many as six documents held in Annexure-2 that Ram Nath Sharma & the Petitioner Chandra Sekhar Prasad Sharma, sons of Gorekh Maharaj are the encroachers of the land. At this

juncture, the relevant portion of Annexure-2 is quoted hereunder:

However, following the order of Hon"ble High Court if the case land is to be settled u/s 8(A) of the O.P.L.E. Act & Rules 16 of O.P.L.E. Rules then it should be entitled with the person (s) encroaching the case land peacefully & undisputedly for more than 30 years. If this provisions are to be followed, then in this case the encroached land should not be settled only in favour of Sri C.P. Sharma but also in favour of Sri Ram Nath Sharma, who happens to be the elder brother of C.P. Sharma as it reveals from the following listed documents (attached to the C/R) that both Ram Nath Sharma & Chandrasekhar Prasad Sharma S 10 Gorekh Maharaj have been the encroachers of the case land.

1. G-Form submitted by RI., Barbil on 07.05.1988.
2. Notice in Form" A" to show cause as to why action should not. be taken against the encroacher.
3. Remarks column of the R.O.R against the plot of the case land.
4. Show Cause filed by the encroacher on 29.07.1988.
5. A number of notices issued by Tahasildar, Barbil ill the Encroachment Case No. 819/88-89.
6. "J" Forms issued to RI., Barbil from this office.

The above list of documents, attached to the case record, clearly proves that both Ram Nath Sharma & Chandrasekhar Prasad Sharma S 10 Gorekh Maharaj are encroachers of the case land. Therefore, it will be unlawful & violation of natural justice, if the case land is settled only with C.P. Sharma U IS 8 (A) of the O.P.L.E. Act thereby ignoring Ram Nath Sharma.

The Opp. Party No. 2 in paragraph-3 of his order under Annexure-3, inter alia observed as follows:

As per the 1st observation of Tahasildar, Barbil it is clear that Ram Nath Sharma is the encroacher alongwith C.P. Sharma, which has been ignored by various Courts. Relevant documents as referred by Tahasildar, Barbil also clarifies this fact. Hence, the whereabouts of Ram Nath Sharma should be ascertained first.

In paragraph-8 of the counter affidavit, the Opp. Parties stated that the Encroachment Case No. 819 of 1988-89 was started against Ram Nath Sharma & Chandrasekhar Prasad Sharma. No rejoinder has been filed repudiating the above statements of the Opp. Parties.

6. A conjoint reading of Section 8-A of the Act, 1972 & Rule 16 of the Rules, 1985 makes it amply clear that the settlement of land under those provisions shall be made only in favour of the encroacher who is in actual continuous & undisputed occupation of the land for more than 30 years by the date of institution of a proceeding against him. Since, the land in question has been encroached by both Ram Nath Sharma & the Petitioner, the settlement, of the

said land in the name of the Petitioner alone will definitely be contrary to those provisions. Law is well settled that any order passed de hors the provisions of Law has no legal sanctity.

In *M.C. Mehta v. Union of India and Ors.* AIR 2006 SC 1352, the Apex Court observed that rule of law is essence of democracy. It has to be preserved. Laws have to be enforced.

The Apex Court in *State of Punjab Vs. Nestle India Ltd. and Another*, held that the Government cannot rely on a representation made without complying with the procedure prescribed by the relevant statute. Moreover, in none of its orders, this Court directed to settle the land in favour of the Petitioner after noticing the fact that the land in question was encroached by both the Petitioner & his brother Ram Nath Sharma.

7. In view of the above, we don't find any illegality or infirmity in the impugned orders passed by Opp. Party Nos. 3 & 2 vide Orders Dated 07.11.2006 (Annexure-2) & 24.11.2006 (Annexure-3) respectively in Encroachment Case No. 819 of 1988-89.

8. Before parting with, we feel it necessary to observe that a plain reading of the Writ Petition, order passed under Annexures-2 & 3 & the counter affidavit filed by the Opp. Parties reveal that the Petitioner has not approached this Court with clean hands disclosing all the relevant facts. No where in the present Writ Petition the Petitioner has disclosed that he & his brother were encroachers of the land in question & the Encroachment Case No. 819/88-89 was initiated against the Petitioner & his brother Ramanath Sharma.

The Apex Court in *Prestige Lights Ltd. Vs. State Bank of India*, held as follows:

It is thus clear that though the Appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary & extraordinary jurisdiction under Article, 226 of the Constitution. Over & above, a Court of law is also a Court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition & dismiss it without entering into merits of the matter.

In *K.D. Sharma v. Steel Authority of India Ltd.* (2008) 12 SCC 481, the Apex Court also held as follows:

The jurisdiction of the Supreme Court under Article 32 & of the High Court under Article 226 of the Constitution is extraordinary, equitable & discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the Petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without

concealing or suppressing anything & seek an appropriate relief. If there is no candid disclosure of relevant & material facts or the Petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

9. In the result, the Writ Petition is dismissed. No order as to costs.

A.S. Naidu, J.

10. I agree.