
(2010) 07 OHC CK 0041
In the Orissa High Court
Case No : Writ Petition (C) No. 6214 of 2002

Dr. Rebatikanta Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Citation : (2010) 07 OHC CK 0041

Hon'ble Judges : L. Mohapatra, J;C.R. Dash, J

Bench : Division Bench

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The Petitioner, who is a Medical Practitioner by profession, has filed this writ application assailing the legality of notice in Annexure-1 issued by the Cuttack Development Authority directing the Petitioner to show cause as to why allotment of land measuring 4178 Sqft. at Jajatikendra Market Complex, Buxibazar, Cuttack made in his favor vide office letter No. 9310 dated 17.7.1997 shall not be cancelled, the same having been made in contravention of the original lease condition of the Government.

2. As it appears from Annexure-2, a decision was taken by the Cuttack Development Authority to allot a space measuring 1500 Sqft. at Jajatikendra Market Complex, Buxibazar, Cuttack in favor of the Petitioner on long term lease basis for a period of ninety years from the date of taking over possession for the purpose of Scanning Centre and also for allied purposes relating to the said centre. Possession of the aforesaid space was handed over to the Petitioner in Annexure-3 on 25.4.1994. In the year 1996, the then Vice-Chairman of Cuttack Development Authority allotted an additional area of 2678 Sqft. at Jajatikendra, Buxibazar, Cuttack for setting up of the C.T. Scan in the premises subject to payment of certain amount. Possession of the said additional land was handed over to the Petitioner in Annexure-3/a on 17.7.1997. Under Annexure-4, the Petitioner was given post facto permission for construction of a three storied building to be exclusively used as a Nursing Home (Health Unit) on 6.1.2000.

After taking possession of the land and a part of the space initially allotted, the Petitioner completed construction of the Nursing Home and started running a Nursing Home in the name and style of "Ideal Nursing Home". The Cuttack Development Authority also permitted the Petitioner to avail loan from financial institutions by mortgaging the said property during lease. While the Nursing Home was running smoothly and the Cuttack Development Authority had no grievance regarding payment of the dues, notice in Annexure-1 was issued by the Secretary of the Cuttack Development Authority to show cause as to why such allotment shall not be cancelled having been made in contravention of the original lease condition of the Government.

3. Shri R.K. Mohanty, learned Counsel appearing for the Petitioner assailed the impugned notice on the ground that the Cuttack Development Authority was conscious of the fact that the Petitioner not only intended to start a Scanning centre but also a Nursing Home for which initially 1500 Sqft. of space was granted in the Market Complex and subsequently land was also allotted for construction of the Nursing Home. Constructions were completed with due approval of the Cuttack Development Authority for the purpose of running a Nursing Home and there is no allegation of any outstanding due against the Petitioner. Having allowed the Petitioner to construct a Nursing Home and run it for several years and also having allowed the Petitioner to take loan from the financial institutions by mortgaging the said property, there was no reason for issuing such a notice.

A counter affidavit has been filed by the Cuttack Development Authority. In paragraph-8 of the counter affidavit, it is stated that on 8.12.1993, the Petitioner applied for 1000 Sqft. of space in the Ground Floor of CDA Market Complex at Buxibazar for installation of City Scan. The then Minister of Health recommended such allotment and, accordingly, on 18.3.1994, 1260 Sqft. Of land was allotted in favour of the Petitioner for installation of C.T. Scan and Imaging Centre. On 19.4.1994, the Petitioner intimated that for a full phase scanning centre, it requires 1500 Sqft. of land and, accordingly, he was allotted 1500 Sqft. of land adjoining to petrol pump in the said Market Complex. He was handed over possession of the said land on 25.4.1994. The Petitioner was again allotted with an additional land of 2678 Sqft. on 31.7.1996 for setting up of a C.T. Scan and Imaging Centre and the said allotment was confirmed by the Cuttack Development Authority on 49th meeting held on 19.3.1997 and possession was handed over to the Petitioner on 29.7.1997. In respect of all the three allotments, required amount had been deposited by the Petitioner. The lease-deed was executed in favor of the Petitioner on 24.2.2000 on long term lease basis for a period of thirty years. However, the Authority in its 71st meeting held on 1.10.2002 resolved to cancel the allotment of land in favor of the Petitioner on the ground that the lease was granted contravening the original lease conditions of Government. In terms of the said resolution, notice in Annexure-1 was issued. The relevant part of the lease-deed executed by the Government in favor of Cuttack Development Authority dated 15.9.1979 prescribes that such

land shall be utilised for commercial purpose namely for Buxibazar Market-cum-Office Complex and, therefore, the same could not have been used for any other purpose, such as, Nursing Home.

4. Upon hearing the learned Counsel for the parties and on perusal of the documents attached to the writ application as well as the counter affidavit, we find that from the very beginning, the Petitioner had applied for allotment of space/land for the purpose of establishing a Scanning and Imaging Centre with allied facilities and also later for running a Nursing Home. The Cuttack Development Authority was aware of the conditions on which lease had been granted by the State Government and being aware of the conditions, it allowed the Petitioner to run a Scanning Centre and Nursing Home. There is no allegation whatsoever that the Petitioner had defaulted in payment of lease premiums. The Cuttack Development Authority had also given permission to the Petitioner to mortgage the said land in order to obtain the loan from the financial institutions. Under these circumstances, is it open for the Cuttack Development Authority to cancel the allotment of the lease granted in favor of the Petitioner on ground of contravention of condition of lease between State Government and Cuttack Development Authority?

5. It is true that the lease-deed executed between the Petitioner and the State Government specifically provides that the land shall be utilized for commercial purpose namely, Buxibazar Market-cum-Office Complex but it nowhere prohibits running of a Nursing Home or a C.T. Scan Centre. It is also submitted by Shri S.K. Nayak-1, the learned Counsel appearing for the Cuttack Development Authority that for last nine years nobody has also applied for allotment of space in the said Market Complex affecting the lease granted in favor of the Petitioner. It is evident from Annexure-8 to the rejoinder filed by the Petitioner that a conscious decision was taken by the Cuttack Development Authority to allot additional lands in favour of the Petitioner for running a Nursing Home and the Minutes of the discussions held on 18.12.1990 show that for more than nine years no one has come forward to take this part of building on rent. Besides, the Nursing Home provides medical services to the local people and people from outside the State. It also appears from the letter dated 22.3.1990 written by the Vice-Chairman to the Petitioner that the Cuttack Development Authority has been provided with two beds in the said Nursing Home for its employees on concessional basis i.e. concession of 50% for the beds in dormitory and concession of 25% for the cabins. This request of the Petitioner for setting up a Nursing Home has been accepted by the Cuttack Development Authority.

6. In view of the above circumstances, we find no reason on the part of the Cuttack Development Authority to issue notice in Annexure-1 for cancellation of allotment on a ground which is otherwise not tenable under the law. We accordingly quash the said notice in Annexure-1.

The writ application is accordingly allowed.