
(2013) 07 OHC CK 0008

In the Orissa High Court

Case No : Writ Petition (Civil) No. 22654 of 2010

Girish Chandra Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-07-2013

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3, 7A, 7A(3)

Citation : (2014) 117 CLT 697 : (2013) 2 OLR 166

Hon'ble Judges : S. Panda, J;B.R. Sarangi, J

Bench : Division Bench

Advocate : P.K. Routray, B.G. Mishra, N.K. Deo, A. Routray and J. Bhuyan, for the Appellant;

Final Decision : Disposed Off

Judgement

B.R. Sarangi, J.—Assailing the order dated 4.9.2010 passed by the Additional District Magistrate, Bhubaneswar in Lease Revision Case No. 815 of 1998 under Annexure-10, the present writ petition has been filed by the petitioner. Petitioner's case in nutshell is that, he was a Flight Lieutenant in Air Force and participated in the external aggression and otherwise entitled to 5 acres of land free of premium ready for cultivation at Government cost. To that extent, he has relied upon the Government resolutions dated 14.5.1963 at Annexure-1, 11.4.1964 at Annexure-2, 7.7.1969 at Annexure-3 and on the basis of such Government resolutions, he made an application on 9.5.1967 for determining his eligibility to get such benefit as admissible to him. Accordingly, the Revenue Officer, Puri vide letter dated 19.9.1967 under Annexure-6 declared that the petitioner is entitled for concession granted by the State Government and accordingly, direction has been given to the Tahasildar, Bhubaneswar to take action immediately with communication to the Revenue Officer, Puri. In Annexure-7 such allotment has been made and R.O.R. has been issued in his favour, but in Annexure-8, he has been called upon to make payment towards reclamation cost for the lease land lying un-reclaimed and to produce the

relevant documents for verification on 25.9.1984. At this juncture, the Additional District Magistrate initiated Lease Revision Case No. 815 of 1998 u/s 7-A(3) of the Orissa Government Land Settlement Act, 1962 in short, "OGLS Act" and by order dated 28.7.1998, the Addl. District Magistrate set aside the settlement of the Government land in favour of the petitioner vide order dated 30.9.1978 passed in W.L. Case No. 101 of 1968-69. Challenging the same, writ application bearing O.J.C. No. 17101 of 2001 was filed and this Court by order dated 28.7.2003 quashed the order of the Additional District Magistrate in Lease Revision Case No. 815 of 1998 and directed for rehearing of the case once again. In compliance to the order of this Court, the Additional District Magistrate in Annexure-10 dated 4.9.2010 has come to a conclusion that the Tahasildar, Bhubaneswar has violated the statutory provisions in settling the case land in favour of the petitioner and acted beyond the jurisdiction vested in him and committed gross material irregularities and legal infirmities thereby he having no power, the order so passed is a nullity and non est in the eye of law, and accordingly, set aside the order of settlement passed in W.L. Case No. 101/1968-69. Hence, the writ petition.

2. The State has filed counter affidavit. In paragraph-6 thereof, it is specifically stated that the petitioner applied to the Tahasildar in the prescribed form as per Rule 3(2) of the Orissa Government Land Settlement Rules, 1974 only on 22.12.1975. Thus, it is evident that in between 6.9.1975 and 21.12.1975, there was no application pending with the Tahasildar, Bhubaneswar. The Tahasildar having no lease application, however, issued general proclamation inviting objections from the public to settle the case land in favour of the petitioner. In paragraph-9 of the said counter affidavit, it is specifically stated that the delegation of power to act under the Government Grants Act was only made on 2.8.1986 and it is further stated that the settled principle that the power, which is not specifically conferred, is specifically forbidden. Therefore, the delegated power, which is exercised by the Tahasildar in 1978 to settle the case land with the petitioner, is not sustainable in the eye of law and reiterated the fact that the land has been settled in favour of the petitioner under the OGLS Act and not under the Government Grants Act, 1895 and, therefore, the order so passed by the Additional District Magistrate is wholly and fully justified and the same cannot be quashed. Further, it is urged by the learned Addl. Government Advocate that since the petitioner submitted the application in the prescribed form under the OGLS Rules. The Tahasildar is estopped to grant the benefits under the Government Grants Act, 1895 as the land has been settled under the OGLS Act. So far as the contentions raised in Annexures-4 & 5 are concerned, no reply has been given in the counter affidavit.

3. Mr. Routray, learned counsel appearing for the petitioner specifically urged that the lease in favour of the petitioner was granted under the Government Grants Act, 1895 and therefore, the proceeding u/s 7-A(3) of the OGLS Act was incompetent and no jurisdiction was available to the Additional District Magistrate to pass the impugned order in Annexure-10. In support of his contention, he has

relied upon the judgments in the case of Rajkishore Das Vs. State of Orissa and Others, , and Mirza Siddik Vs. State of Orissa and Others, wherein this Court has held that settlement of 5 acres of land in favour of an ex-army personnel was not made in accordance with the provisions of the OGLS Act, but the same was made under the lease principles read with the Government notifications which made special provision for special categories of personnel, who could not be treated on the same footing as private individuals and thereby the suo motu proceedings u/s 7-A(3) of the OGLS Act cannot be resorted to for examining the correctness or otherwise of the settlement made in favour of the Jawan. A further question was raised that the action of the Additional District Magistrate is contrary to the provisions contained in Section 7-A(3) of the said Act and as such, the suo motu revision was barred by limitation. To that extent, reliance has been placed on the judgment of this Court in Gopaldas Agrawal Vs. State of Orissa and Others, and Bata Krushna Nayak Vs. State of Orissa and Others, , wherein this Court has already held that the revision u/s 7A of the OGLS Act cannot be initiated after expiry of the period of 14 years as prescribed in the proviso to Section 7-A(3) and the order passed in such revision initiated beyond the period of 14 years cannot be sustained.

4. Pursuant to the order of this court, LCR was called for. On perusal of the same, it is found that the petitioner has submitted an application in Form-I under Rule 3(2) of the OGLS Rules addressed to the Tahasildar for settlement of the land under the OGLS Act on 18.12.1975, which was registered as Lease Case No. 101/68-69. The notice in the said lease case was issued to one "Guru Charan Mohanty" (Jawan) instead of the petitioner, namely, "Girish Chandra Mohanty", which indicates that no notice has actually been served on the petitioner.

5. In view of the aforesaid facts and circumstances, the moot questions that arise for consideration are:

(i) whether the land settled in favour of the petitioner was under the Government Grants Act, 1895 or under the OGLS Act; and

(ii) whether the action taken by the Additional District Magistrate is justified or not.

6. While considering the above questions, it is apt to mention here that before commencement of the OGLS Act, the Government waste lands were being settled under the Executive instructions as well as customary practice and usage prevalent in various parts of the State. Therefore, in order to have uniformity of principles in the settlement of such lands, the OGLS Act was enacted in 1962. Section 3 of the OGLS Act prescribes the power to be exercised by the Government regarding settlement of the land. Subsections (2) and (3) of Section 3 prescribe the manner of settlement of Government land and the said two provisions are mandatory in nature. As regards sub-section (3), it is provided therein that settlement shall be made in order of priority; first, Co-operative farming societies formed by the agricultural labourers; secondly, landless

agricultural labourers of the village in which the land is situate or of the neighbouring village, thirdly, ex-service men or members of the Armed forces if they belong to the village in which the land is situate, fourthly, raiyats who personally cultivate not more than one standard acre, and fifthly, in absence of any of the aforesaid four categories, on any other person. In the present case, the petitioner being a Jawan, it comes under sub-section (3) of Section 3 of third category. The legislative intention of having the aforesaid provision in the Statute is that Government waste lands should first go to those persons who actually need for their sustenance. No discretion is left with the Tahasildar to settle such lands with any other person over-looking the aforesaid mandatory provisions of the Act. Sub-Section (3) of Section 3 was inserted in the OGLS Act vide Orissa Act 5 of 1974. Therefore, pursuant to Annexures-4 & 5 on the basis of the application submitted on 9.5.1967, eligibility of the petitioner has been determined under the provisions of the Government Grants Act read with the lease principles and Government notifications vide Annexures-1 to 3 which made special provision for special categories of personnel like that of the petitioner.

7. From the LCR it is found that the petitioner filed the application on 18.12.1975 for allotment of land in a prescribed form under Rule 3(2) of the OGLS Rules, but his right to get settlement of land flows from Annexures-4 & 5 read with the Government notifications under Annexures-1 to 3 which made special provisions for special categories of personnel, who cannot be treated on the same footing as private individuals. If such right has accrued in favour of the petitioner, the same cannot be taken away merely because he made the application in the prescribed form under Rule 3(2) of the Orissa Government Land Settlement Rules for settlement of the land.

8. The Supreme Court in *P. Balakotaiah Vs. The Union of India (UOI) and Others*, has held that if the exercise of power can be traced to a legitimate source, the fact that the same was purported to have been exercised under a different power does not vitiate the exercise of power in question.

Similar view has also been taken by the apex Court in *Hukumchand Mills Ltd. Vs. The State of Madhya Bharat and Another*, , which is followed in *The Vice-chancellor, Jammu University and Another Vs. Dushiant Kumar Rampal*, , wherein the Supreme Court held as follows:

It is true that the order of suspension did not recite Statute 24(ii) as the source of power under which it was made, but it is now well settled, as a result of several decisions of this Court, that when an authority makes an order which is otherwise within its competence, it cannot fail merely because it purports to be made under a wrong provision of law, if it can be shown to be within its powers under any other provision: a wrong label cannot vitiate an order which is otherwise within the power of the authority to make.

9. In view of the aforesaid well settled principles of law, non-mention or wrong nomenclature of case cannot disentitle a party to get his benefit. In the present

case, the Additional District Magistrate proceeded on erroneous footing by applying the provisions of OGLS Act, thereby, the order so passed suffers from error apparent on the face of record. The entitlement of the petitioner for settlement of the land pursuant to Annexures-4 and 5 is not disputed more particularly, it is the admitted case of the parties that he was serving as a Flight Lieutenant in Air Force and is otherwise entitled to the facilities available to the Jawans. The grant of concession available to an army personnel can only be made available under the Government Grants Act, 1895.

10. In view of the foregoing discussions, the impugned order dated 4.9.2010 passed by the Additional District Magistrate, Bhubaneswar in Lease Revision Case No. 815 of 1998 under Annexure-10 is quashed and the matter is remitted back to the Addl. District Magistrate to reconsider the same applying the provisions of the Government Grants Act, 1895 with regard to the concession granted in favour of the Jawans for settlement of the land read with the lease principle and Government notifications under Annexures-1 to 3 within a period of two months from the date of receipt of certified copy of this judgment.

11. In the result, the writ petition is disposed of with the aforesaid observation. However, there shall be no order as to costs.

S. Panda, J.

I agree.