
(2005) 08 OHC CK 0021
In the Orissa High Court
Case No : Writ Petition (C) No. 5144 of 2005

Gopaldas Agrawal

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7A, 7A(3)
Orissa Land Reforms Act, 1960 — Section 22

Citation : (2005) 100 CLT 661 : (2005) 2 OLR 457

Hon'ble Judges : M.M. Das, J;C.J.MANUOR02892005.htm, J

Bench : Division Bench

Advocate : Shyamananda Mohapatra, B.K. Rout and P.K. Nanda, for the Appellant;

Final Decision : Allowed

Judgement

1. The petitioner in this writ application calls in question the order dated 31.3.1998 passed by the Addl. District Magistrate, Bhubaneswar in Lease Revision Case No. 143 of 1998 cancelling the lease granted in favour of one Ganesh Dehury by the Tahasildar, Bhubaneswar in W.L. Case No. 1027 by the order dated 4.8.1973.

2. The petitioner's case is that on an application being made by the original lessee - Ganesh Dehury to the Tahasildar, Bhubaneswar, land measuring of 750 decimals out of Sabik Plot No. 225 under Khata No. 95 in village Dalua was directed to be settled with him by the order dated 4.8.1973. The said original lessee being in need of money, wanted to sell the said land and the petitioner being ready and willing to purchase the same from the original lessee who belongs to Scheduled Tribe community, made an application to the Revenue Officer, Bhubaneswar u/s 22 of the Orissa Land Reforms Act for permission to sell the land to the petitioner. The said application was registered as Revenue Misc. Case No. 387 of 1987 and the permission was duly granted by the Revenue Officer on 30.11.1987. The petitioner, thereafter, purchased the said land by

virtue of a registered sale deed executed by the original lessee and is continuing in peaceful possession thereof. Subsequently, the petitioner's name has also been mutated in the Khatian.

3. Mr. S.N. Mohapatra, Senior Advocate appearing for the petitioner submits that the impugned order under Annexure- is not sustainable on two counts i.e. though the Opp. Parties had knowledge that the petitioner had purchased the leasehold property both, from the Revenue Misc. Case No. 387 of 1987 by which permission was accorded to the original lessee to transfer the land and the fact that the petitioner's name has been mutated in land records, but no notice whatsoever was issued to the petitioner in the Lease Revision Case No. 143 of 1998 in which the Addl. District Magistrate, Bhubaneswar has passed the order on 31.3.1998 setting aside the lease. Further, the said Lease Revision Case having been initiated after the period of limitation prescribed by law, the impugned order is wholly without jurisdiction.

4. Mr. D.C.Mohanty, learned Government Advocate on the contrary submits that in a Public Interest Litigation bearing OJC No. 9449 of 1993 by the order dated 28.1.1998, this Court directed to scrutinise the frauds committed in the case where land has been leased out in and around Bhubaneswar and pursuant to the said order, all such cases were re-examined and the present case is one of such cases. However, on bare reading of the impugned order Annexure-1, we are unable to find that the lease in question has been set aside by the Addl. District Magistrate on the ground of fraud. Rather it is seen that the said Addl. District Magistrate has found some irregularities in granting the said lease.

5. Be that as it may, the power of suo motu revision provided u/s 7-A of the Orissa Government Land Settlement Act, 1962 is subject to the two provisos to Sub-section (3) thereof which are as follows :

"7-A. Revision (1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

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 subsection shall be initiated after the expiry of fourteen years from the date of the order."

6. Applying the above provisos we find that the impugned order suffers from the rigour of both the aforesaid provisos. Accepting the contention of Mr. Mohapatra, we hold that the impugned order dated 31.3.1998 passed in Lease Revision Case No. 143 of 1998 by the Addl. District Magistrate, Bhubaneswar is without causing any notice on the petitioner who is the affected party and further, the lease having been granted on 4.8.1973, the suo motu revision case is hopelessly barred

by time as provided under the second proviso quoted above. We further observe that the order of this Court said to have been passed in OJC No. 9449 of 1993 cannot under law extend the period of limitation as provided under the Act and hence, we repeal the contention of the learned Government Advocate in this regard.

7. In the result, the writ application is allowed and the impugned order Annexure-1 is quashed.

8. Urgent certified copy of this order be granted on proper application.