
(1994) 10 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 4530 of 1994

Govinda Chandra Sahoo and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Orissa Grama Panchayat Rules, 1968 — Rule 86, 87

Citation : (1995) 1 OLR 530

Hon'ble Judges : V.A. Mohta, C.J.; R.K. Patra, J

Bench : Division Bench

Advocate : Deepak Misra, B. Parida, Amiya Kumar Mohanty and M.M. Moharana, for the Appellant; Additional Government Advocate and A. Mukherjee, Gautam Mukherjee and Partha Mukherjee for O.P. No. 4 and S.K. Padhi and S. Parida for O.P. No. 7, for the Respondent

Final Decision : Allowed

Judgement

V.A. Mohta, C.J.—Here is a sad-but not necessarily unusual-story of lamentable state of affairs of our public life. Very valuable lease rights in the immovable property vested in the Grama Sasan have been disposed of by the Gram Panchayat clandestinely for a song in violation of basic norms in collusion with those who matter. Loss to the tune of at least Rs. 10 Lacs has been caused thereby seriously affecting much needed development projects.

2. Within the area of Dinkia Gram Panchayat in the District of Jagatsinghpur exists a water tank bearing a popular name "Badara Zora". In the year 1991-92 the water tank was managed and operated by the Gram Panchayat and thereafter it was leased out on year to year basis by public auctions. Dillip Kumar Behera-opp. party No. 7- as highest bidder in the auction for the year 1993-94 had become the lessee. The term of the lease was to expire with the end of June, 1994. The B.D.O. fixed the public auction of lease rights for further period on 24-3-1994. The auction was postponed first to 12.5.1994, then to 2.6.1994 and

lastly to 18.6.1994 on various grounds including administrative exigencies and absence of the bidders at the time of auction. On 15.6.1994, i.e., 3 days before the last date fixed for auction, the Gram Panchayat passed the following resolution transferring the lease rights in favour of opp. party No. 7 for the sum of Rs. 6 Lacs approximately (10% over the last year's bid):

"On consideration of the fact that there was excess bid for the year 1993-94 in comparison to other year's and the lessee Sri Dillip Kumar Behera has sustained loss due to spread of diseases among the fish and on the said basis, he has submitted a representation, it is resolved that on addition of 10% to the last year's lease amount, the said Sairat be leased out to him for the period of three years. This resolution is forwarded to the Sub-Collector, Jagatsinghpur, with a request for approval."

3. By this petition as many as 44 petitioners have challenged the validity of the above resolution and have sought the relief of grant of lease in their favour. The petitioners have offered to purchase the lease rights for a sum of Rs. 17 Lacs.

4. Rule 86 and onward Rules of the Orissa Gram Panchayat Rules, 1968 (the Rules) framed by the State Government by virtue of authority conferred by the Orissa Gram Panchayat Act, 1964 (the Act) " deal with the manner of transfer of property of Grama Sasan. We reproduce Rule 86 for ready reference :

"86. (1) No immovable property vested in a Grama Sasan shall be transferred by way of sale, gift, mortgage or exchange without the approval of the State Government.

(2) Whenever in respect of any property vested in or under the management and control of the Grama Sasan, the State Govt. deem it expedient so to do, they may by general or special order made in that behalf and subject to such conditions, as may be specified therein, direct that such property shall be leased out in favour of any Registered Co-operative Societies by negotiation. The agreement for such lease shall be in Form F.

(3) Notwithstanding anything contained in these rules, the water area vested in or under the management and control of the Grama Sasan may with the approval of the Collector be leased out by negotiation for a period not exceeding 10 years in favour of an individual who is a fisherman by caste or profession, any group of individuals or Registered Co-operative Societies consisting only of fishermen by caste or profession, landless labourers, marginal farmers, scheduled caste and scheduled tribe persons, who are desirous to take pisciculture on modern line in such water area and are recommended by the Chief Executive Officer of the Fish Farmers Development. Agency within whose operational jurisdiction such water area is situated. When such agency is not in operation such recommendation can be made by the district level Fisheries Officer. The lease consideration for the first two years of the lease shall not be less than the amount equal to average of the lease amount of the water area for the last three years and from the third year shall be at the rate of five hundred

rupees per year per hectare. The lease amount for a year should be paid in advance and if the amount is not paid in advance, the lease shall automatically stand cancelled. The agreement for such deed shall be in Form "F".

(4) The management of the property vested in a Gram Sasan for the time being in any manner whatever. Excepting the property mentioned in Sub-rule (3) shall be made in the manner hereinafter provided."

Sub-rule (1) specifies that no immovable property vested in the Grama Sasan shall be transferred by way of sale, gift, mortgage or exchange without the approval of the State Government. Sub-rule (2) permits the State Government to direct such property to be transferred on lease by negotiation in favour of any Registered Co-operative Societies subject to conditions that may be specified. Directions can be issued by general or special order. Sub-rule (3) deals specially with the water areas vested in or under the management and control of the Grama Sasan. Grama Sasan has been given discretion to lease out by negotiation, with the approval of the Collector, the water areas for a period not exceeding 10 year in favour of certain classes of persons and/or bodies who desire to take to pisciculture on morden basis. For this recommendation by the Chief Executive Officer of Fish Farmer Development Agency or in his absence by the district level Fisheries Officer is necessary. Some other conditions are also attached to such lease. Sub-rule (4) makes it abundantly clear that excepting the property mentioned in Sub-rule (3) the rest shall be managed only in the manner provided hereinafter. Rule 87 lays down that the properties shall be leased out only by public auction for which detailed procedure is prescribed.

5. Now, from the impugned resolution (Annexure-7) it is amply clear that the basis of this unusual grant in favour of opp. party No.7 is His representation to the effect that last year there was exces, bid and he had suffered loss due to spread of disease among the fishes. However, justification before us has been on the ground that there were no takers for the lease rights in the public auction despite repeated efforts. This spacious version, so solemnly put forth in the return and vehemently supported in the course of hearing, does not at all impress us. There are weighty reasons to come to that conclusion. In the first place, this reason is most unnatural. Moreover no material is produced in support of the plea. Within few months of the auction as many as 44 petitioners have offered to purchase the lease rights for Rs. 17 Lacs. Even the opp. party No. 7 has volunteered to enhance the amount to Rs. 15 Lacs. It is pertinent to notice that the resolution is blissfully silent on this facet of the matter. Absence of bidders is a facade. In fact it is a clear case of fraudulent and mala fide transfer brought about in collusion with the authorities. Resolution which is passed with rare unanimity displays unjustified sympathy at the cost of public interest and public duty. In fact it is hard to believe that sympathy mentioned in the resolution is even genuine.

6. Grama Panchayat and opp. party No. 7 have also put forth legal justification for not holding the public auction. According to them Sub-rule (3) of Rule 86

mandates disposal of leasehold rights in the water area only by negotiation and gives no discretion to transfer the rights by public auction. Sub-rule (3), it is contended, aims at protecting certain weaker sections of society from the unhealthy competition from the moneyed class in the public auction, considering the objective, the arguments proceed, the word "may" appearing in Sub-rule (3) should be read as "shall". The submission has to be stated merely to be rejected. There can be no manner of doubt that though the word "may" in English language can never mean "must", the word "may" can be read as "shall" and vice-versa in case the context so warrants, these words being readily interchangeable. But context does not at all warrant such interpretation. General scheme relating to the transfer of immovable property vested in the Grama Sasan is that basically the said property cannot be transferred by four modes such as sale, gift, mortgage or exchange without the approval of the State Government. Transfer by lease is permissible by other modes under Sub-rules (2) and (3). Sub-rule (2) permits lease by negotiation in favour of Registered Co-operative Societies provided State Govt. as directs and that too on conditions specified. Sub-rule (3) speaks about lease of water area. It can be granted by negotiation in favour of certain classes of persons or bodies in case they are desirous of taking pisciculture on modern lines, provided certain officers recommend. This is also subject to approval by the Collector. Sub-rule (3) is thus clearly an enabling provision, under which the Grama Sasan has been given discretion to lease out rights in water areas by negotiations to certain classes of persons for certain purposes and that too if certain officers recommend and Collector approves. It is not at all possible to read in it a mandatory requirement to transfer all leases of water areas only by negotiations. The spacious argument that such grant is restricted only to certain weaker sections of the society sounds hollow. Any professional fisherman-irrespective of the extent of his wealth also falls in the category of persons entitled. Several other conditions are also attached to the grant by negotiation which militates against the requirement being termed as mandatory. The submission does not even sound genuine. So far Gram Panchayat had never transferred the lease by negotiation. Either the water area was managed by the Gram Panchayat or its lease right was sold by public auction.

7. In support of the proposition that the word "may" can be read as "shall" strong reliance was placed on certain passages from "Principles of Statutory Interpretation" 5th Edition, 1992 by Justice G. P. Singh and two decisions of the Supreme Court (i) Punjab Sikh Regular Motor Service, Moudhapara Vs. The Regional Transport Authority, Raipur and Another, and (ii) Shri Rangaswami, The Textile Commissioner and Others Vs. The Sagar Textile Mills (P) Ltd. and Another, . No doubt in these decisions word "may" was read as "shall" in the context of certain other provisions, but only for that reason the ratio of those decisions would not apply to the instant matter. Proposition is too well known to be noticed in detail. Context of these cases have no resemblance even remotely to the case at hand.

8. All that remains is the disposal of the preliminary objection against entertaining the writ petition in the face of existence of alternate remedy of appeal u/s 133 of the Act. Now, it is well known that existence of alternate remedy is no bar for exercise of constitutional jurisdiction under Article 226. The answer to the issue involved in the instant petition is as clear as day light. The grant is clearly illegal and mala fide and cannot stand legal scrutiny. There is no point in subjecting the parties including public body like the Gram Panchayat to the avoidable drudgery of series of appeals specialty when they may be unnecessary and infructuous in the circumstances. After all, allegations are that the impugned resolution has been passed with the connivance of high govt., officials name of whom may be the appellate authorities. The remedy of appeal is thus merely illusory in fact. Certainly this remedy would -not be in the interest of Grama Sasan. Adjudication is bound to be delayed and there will be irreparable loss to the property of Grama Sasan.

9. It is contended on behalf of the opp. party No. 7 that he has invested some amount in the tank and while deciding the petition this aspect of the matter should not be ignored. Now, it is possible that opp. party No. 7 has invested some amount. But that cannot be a ground to sustain this clearly illegal, mala fide and collusive grant.

10. What relief is the ultimate question. Impugned resolution has to be quashed and set aside, but the lease-hold right cannot be straightaway given to the petitioners on the basis of the highest offer given during the course of this litigation as prayed for by them Perhaps public auction of the property would derive much more price and would benefit to the poor people of village Dinkia and hence we pass the following Order.

The petition is allowed. The resolution at Annexure-7 is quashed and set aside. We direct the lease hold rights in the water tank be put to public auction in accordance with (aw within 15 days from today. Having regard to the totality of the background, we also direct that the upset price as per Rule 87(c) should not be less than Rs. 15 Lacs.

Needless to mention that the petitioners are free to take back the refund of Rs. 5 Lacs which they have deposited in the Court as an interim arrangement.

R.K. Patra, J.

11. I agree.