

(2014) 01 OHC CK 0001

In the Orissa High Court

Case No : W.P. (C) Nos. 9250 of 2005, 794, 13994, 13995, 13996, 13998, 13999 of 2008, 1098 of 2009, 10232, 22918 of 2010, 2634, 25667 of 2011, 5886 and 17502 of 2012

Jyotsnasingh

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 29-01-2014

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 7-A, 7-A(3)
Orissa Land Reforms Act, 1960 — Section 22, 6-A

Citation : (2014) 118 CLT 201 : (2014) 2 OLR 129 Suppl. : (2014) 2 OLR 129

Hon'ble Judges : M.M. Das, J;C.R. Dash, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

M.M. Das, J.—As in all the aforesaid Writ Petitions, common question of law arises, the matters were heard together & are being disposed of by this common Judgment. The Petitioners in all the Writ Petitions claim to have purchased the lands from the original lessees in whose favour, the lands were settled by the Tahasildar in different mouza within the jurisdiction of Bhubaneswar Tahasil in different W.L. Cases.

2. If appears that in some of the cases, the lessees obtained permission u/s 22 of the O.L.R. Act to transfer the lands as they belonged to the reserved category & upon due permission being granted, they alienated the land in favour of the petitioners. Leases were granted in various W.L. Cases in the year 1974. The A.D.M., Khurda initiated suo motu revision cases u/s 7-A of the O.G.L.S. Act, 1962 (for short, "the Act") & without impleading the purchasers as parties heard the said revision cases & by the impugned orders cancelled the leases granted in favour of the lessees who are the vendors of the present Petitioners. The Petitioners have raised two questions before this Court, the first being that, as per Section 7-A of the Act they were entitled to be heard by the A.D.M. & no notice having been issued to them affording opportunity of hearing, there is

flagrant violation of the principle of natural justice, which is also contrary to the said Section of the Act. The other question raised is that the revisions having been initiated much after the prescribed period, were barred by time & the A.D.M. had no jurisdiction to initiate such suo motu revision cases. The Petitioners have also submitted that initially there was a ban period of five years under the O.L.R. Act, which was mentioned in the lease granted in favour of the original lessees & they having sold the property after expiry of five years from the date of the lease, the amendment brought to Section 6-A of the O.L.R. Act (by Orissa Act 29 of 1976) prescribing the ban period as ten years will not have any retrospective effect.

3. Countering the above submissions, the State has come out with a case that the A.D.M. was correct in initiating the proceedings, as because, the sales made in favour of the Petitioners were within the ban period of ten years & the amended Section 6-A of the O.L.R. Act brings within its fold all settlements of land made for agricultural purpose. As such, the extended ban period from five years to ten years is applicable to the facts of the present case. Sales having been made contrary to the aforesaid provision of the O.L.R. Act, are void sales & the Petitioners have no locus standi to challenge the order cancelling the leases, in absence of the original lessees challenging the same.

4. The Petitioners have relied upon Section 7-A(3) of the Act, Clause (3) of which prescribes that no order shall be passed under the said sub-Section unless the person affected by the proposed order has been given a reasonable opportunity of being heard in the matter & also on the proviso of the said sub-Section which provides that no proceeding under the said sub-Section shall be initiated after the expiry of fourteen years from the date of the order, i.e., the date of grant of lease. They have further, in support of their contention, relied upon several decisions of this Court, wherein it was held that after period of fourteen years, the A.D.M. cannot initiate a suo motu revision case.

5. Learned Counsel for the State, on the contrary, relied upon the decision in the case of Bhaskar Subudhi & another v. State of Orissa & others, (W.P.(C) No. 17514 of 2006 decided on 29.9.2011) in which this Court interpreted the effect of amendment to Section 6-A of the O.L.R. Act, in support of his contention that the sales made by the lessees within the ban period are void sales.

6. From the materials on record, we find that in fact, the A.D.M. in the impugned orders passed in the Revision Case Nos. 894 of 1998, 625 of 1998, 894 of 1998, 894 of 1998, 889 of 1998, 889 of 1998, 757 of 1987, 702 of 1987, 662 of 1998, 680 of 1998, 729 of 1998, 695 of 1987, 460 of 1983 & 634 of 1998, which have been respectively challenged in the aforesaid Writ Petitions, has not given any opportunity of hearing to the Petitioners, who rightly or wrongly purchased the lands from either the original lessees or their vendees. The A.D.M. has also not considered as to whether he had jurisdiction to initiate the suo motu proceeding after the prescribed period of fourteen years as per the proviso to Section 7-A(3) of the Act. As we find that the Petitioners have not been afforded with

opportunity of hearing by the A.D.M. in the aforesaid revision cases before the impugned orders were passed, while quashing the impugned orders in all the Writ Petitions, we remit the matters back to the A.D.M. to consider the revisions afresh. While doing so, he shall afford opportunity of hearing to the Petitioners & shall take into consideration all the questions raised by them as well as the Opp. Parties & pass a reasoned order dealing with all such questions. All the Writ Petitions are disposed of.

C.R. Dash, J.

I agree.