

(2020) 09 OHC CK 0001
In the Orissa High Court
Case No : Writ Petition (C) No. 8724 Of 2009

Kailash Nath Patnaik

APPELLANT

Vs

State Of Odisha & Others

RESPONDENT

Date of Decision : 01-09-2020

Acts Referred:

Odisha Government Land Settlement Act, 1962 — Section 3B, 7A(1), 7A(3)

Citation : (2020) 09 OHC CK 0001

Hon'ble Judges : K.R. Mohapatra,J;Mohammad Rafiq

Bench : Division Bench

Advocate : Ashok Mohapatra, M.S. Sahoo

Final Decision : Allowed

Judgement

K.R. Mohapatra, J

1. The petitioner, in this writ petition, calls in question the order dated 17.01.2009 (Annexure-5) passed by the Sub-Collector, Bhubaneswar (OP No.2) in Waste Land Appeal Case No.08 of 2008 thereby confirming the order dated 30.06.2003 (Annexure-4) passed by Additional Tahasildar, Bhubaneswar in WL Case No.850 of 1974 initiated under Section 3-B of Odisha Government Land Settlement Act, 1962 (for short, 'the Act').

2. Facts in nutshell relevant for proper adjudication of this case are that one Debara Badara-opposite party No.3 being a landless person, applied for settlement of a piece of Government land. On the basis of his application, WL Case No.850 of 1974 was initiated by the Tahasildar, Bhubaneswar and observing formalities and due procedure of law, an area of Ac.1.000 decimal was settled in his favour. Accordingly, Record of Right (Annexure-1) in respect of Plot No.590/970/985 under Khata No.176/4 in Mouza Sundarpur under Chandaka Police Station in the district of Khordha (for short, 'the case land') was issued in favour of opposite party No.5.

Due to his legal necessity, the opposite party No.5 sold an area of Ac.0.500

decimal in favour of the petitioner vide RSD No.11244 dated 30.12.1988 (Annexure-2), after obtaining permission of the Revenue Officer, Bhubaneswar in Revenue Misc. Case No.288 of 1987 and delivered possession thereof. While the matter stood thus and the petitioner was in peaceful possession over the case land, the Tahasildar, Bhubaneswar (OP No.3) initiated a proceeding under Section 3-B of the Act on the ground that the opposite party No.5 was not using the land for agriculture purpose, for which it was leased out. As such, pursuant to the direction of this Court, vide order dated 29.01.1996 in OJC No.9449 of 1993 and in obedience to the direction of the Government of Odisha in the Department of Revenue as well as direction of Collector, Khordha, resumption proceeding in respect of the case land was initiated under Section 3-B of the Act in WL Case No.850 of 1974. Ultimately, vide order dated 30.06.2003 (Annexure-4) passed in WL Case No.850 of 1974, the Additional Tahasildar, Bhubaneswar (OP No.4), cancelled the lease granted in favour of opposite party No.5 in respect of the case land and resumed the same. Since the order under Annexure-4 was passed by the Additional Tahasildar, Bhubaneswar in WL Case No.850 of 1974 neither issuing notice nor providing any opportunity to the petitioner, he moved this Court in W.P.(C) No.9281 of 2007 assailing the said order, which was disposed of on 09.10.2007 granting liberty to the petitioner to file appeal against the order dated 30.06.2003 (Annexure-4). Accordingly, the petitioner filed WL Appeal Case No.850 of 1974, before opposite party No.2-Sub-Collector, Bhubaneswar, who by his order dated 17.01.2009 (Annexure-5) dismissed the appeal and thereby confirmed the order passed by the Tahasildar, Bhubaneswar under Annexure-4. He further directed to delete the name of opposite party No.5 from ROR and to record the case land in Government Khata. Hence, this writ petition is filed for the aforesaid relief.

3. Mr. Mohapatra, learned counsel for the petitioner reiterating the aforesaid factual position of the case, submitted that initiation of the proceeding under Section 3-B of the Act is illegal. The proceeding for resumption can be initiated only when the land is used for a purpose other than for which it was leased out. The proceeding under Section 3-B of the Act was initiated pursuant to the direction of this Court dated 29.01.1996 passed in OJC No.9449 of 1993 (Sarat Kumar Sahoo Vs. A.D.M., Khurda and others) reported in 81 (1996) CLT 513. It was observed therein that the land adjoining the State Capital had been settled by Tahasildar, Bhubaneswar for agricultural purpose by exercising power under Odisha Government Land Settlement Act, 1962. Since irregularities in large number of such Settlement was observed by this Court, the State Government was directed therein to enquire into the matter through a Senior Officer in the rank of Secretary and on enquiry if it comes to the light that the Tahasildars by misuse of power had settled the land, necessary legal and administrative action should be taken against them and further if the land so settled are used otherwise for the purpose for which it was leased out the Government should proceed against the lessee in accordance with law. Accordingly, Government of Odisha in the Revenue and Excise Department decided to deal with the cases

under Section 7-A(3) of the Act. However, in those cases where a proceeding under Section 7-A(3) of the Act could not be initiated due to lapse of 14 years from the date of such settlement, it was decided to initiate proceeding under Section 3-B of the Act by the Tahasildar, Bhubaneswar to deal with such cases. In the instant case, no enquiry by an Officer in the rank of Secretary was conducted. The Tahasildar, Bhubaneswar on presumption that the land was being used for a purpose other than agriculture, initiated the proceeding for resumption. As such, the initiation of the proceeding under Section 3-B of the Act is per se illegal. He further submitted that neither the petitioner nor the original lessee was ever noticed at the time of so-called enquiry conducted by the Revenue Inspector along with the Tahasildar. It is his submission that the land is still being used for agriculture purpose.

4. He further submitted that the proceeding under Section 3-B of the Act was initiated beyond 27 years of the Settlement in favour of opposite party No.5. Although no limitation is provided under Section 3-B of the Act, the proceeding ought to have been initiated within a reasonable period and lapse of more than 27 years, can by no stretch of imagination be considered to be a reasonable period for initiation of the proceeding for resumption. The Tahasildar in his order under Annexure-4 has observed that the record of WL Case No.850 of 1974 was not traced out. Thus, there was no material before him to come to a conclusion that the lease was granted misusing power. In support of his submission, he relied upon a decision of this Court in the case of Loknath Mishra and others Vs. State of Orissa and others, reported in 2006 (II) OLR 544. It is apparent that from orders passed under Annexures-4 and 5 both the Courts below have categorically observed that the case land was lying vacant at the time of spot inspection by the Revenue Inspector. There is no other material to come to a conclusion that the land is being used for a purpose other than agriculture. In absence of any material, the finding of learned Courts below to the effect that the land is not being used for agriculture purpose, appears to be without any basis. As such, a proceeding under Section 3-B of the Act is not maintainable. In support of his case, Mr. Mohapatra, learned counsel relied upon another decision of this Court in the case of Sri Narana Nayak Vs. State of Orissa and three others, reported in 2008 (II) OLR 806.

5. The petitioner had purchased the case land with due permission of the competent authority, namely, the Revenue Officer, Bhubaneswar. As such, he ought to have been noticed by the Tahasildar, Bhubaneswar at the time of adjudication in the resumption proceeding. Further, one of the grounds for resumption of the case land, as observed by Sub-Collector, Bhubaneswar in the impugned order under Annexure-5 is that the lessee was not in possession over the case land. The same is fallacious inasmuch as when the case land was sold to the petitioner by virtue of a registered sale deed and possession of the same was delivered to the petitioner, the lessee is not expected to be in possession. The Tahasildar ought to have made an enquiry as to who was in possession of the case land and proceeded with the matter in accordance with law issuing notice to

the person in possession, namely the petitioner. As such, the observation of the Sub-Collector, Bhubaneswar is an outcome of sheer non-application of mind. In that view of the matter, the impugned orders under Annexures-4 and 5 are not sustainable and are liable to be quashed.

6. Mr. Sahoo, learned AGA, on the other hand, refuting the submissions of Mr. Mohapatra, submitted that the writ petition is not maintainable in view of availability of alternate remedy under Section 7-A (1) of the Act. Since the case land was settled with the lessee, namely, opposite party No.5 for agriculture purpose, he could not have sold the land to the petitioner without the knowledge of the authorities under the Act. Further, the alienation of the case land would amount to use of the land other than the purpose of agriculture. Further with reference to the Record of Right at Annexure-1, he submitted that at the time of initiation of proceeding under Section 3-B of the Act the land was recorded in the name of opposite party No.5, the original lessee. Although the case land was sold to the petitioner the same was not mutated in his name till 2002 when the proceeding under Section 3-B of the Act was initiated. As such, the Tahasildar, Bhubaneswar had no occasion to know about the aforesaid alienation of opposite party No.5 in favour of the petitioner. He further submitted that although the petitioner was not given any opportunity of hearing before Tahasildar, Bhubaneswar, he himself had filed the appeal assailing the said order and was given ample opportunity to put forth his case. As he could not establish that the land was being used for agriculture purpose, the Sub-Collector, Bhubaneswar has rightly dismissed the appeal by his order under Annexure-5 confirming the order of the Additional Tahasildar, Bhubaneswar passed under Annexure-4. He, therefore, submitted that the writ petition being devoid of any merit is liable to be dismissed.

7. We have heard the learned counsel for the parties at length and perused the materials placed before us. Admittedly, the case land was settled in favour of opposite party No.5 in WL Case No.850 of 1974 following due procedure of law. There is no finding either in the order under Annexure-4 passed by Additional Tahasildar, Bhubaneswar or in the order under Annexure-5 passed by the Sub-Collector, Bhubaneswar to the effect that the Tahasildar has misused the power under the Act to settle the case land in favour of opposite party No.5. Now the question arises as to whether the case land was being used for a purpose other than agriculture for which it was leased out in favour of opposite party No.5. It is the categorical observation of the Sub-Collector, Bhubaneswar (OP No.2) that the case land was lying fallow at the time of local inspection by the Revenue Inspector along with Tahasildar, Bhubaneswar. Only because the case land was lying fallow at the time of local inspection, it cannot be a ground for reasonable presumption that the case land was being used for a purpose other than agriculture. There is no material on record to come to a conclusion that the case land was being used for any specific purpose other than agriculture. Neither the petitioner nor the Opp. Party No.5-lessee was noticed at the time of local inspection, if any. As such, the findings of the Courts below to the effect that the

case land was used for a purpose other than agriculture, is without any basis. In absence of any specific finding to the effect that the case land was, in fact, being used for a particular purpose other than agriculture, the provision of Section 3-B of the Act has no application to the facts of the case. In the case of Sri Narana Nayak (*supra*), this Court observed as follows:-

"On perusal of the impugned order, we also find that the land had been settled in favour of the petitioner for agricultural purpose and at the time of enquiry it was found that the land is not being used. Section 3-B of the Act provides that if the land settled is being used for any purpose other than the purpose for which it had been settled, the Tahasildar may resume the same. There is no evidence on record or finding to the effect that the land settled in favour of the petitioner is being used for any purpose other than the purpose for which it had been settled. If any agricultural activity is not carried on the land and it is not used for any purpose, it will not amount to use of the land for some other purpose. We are therefore of the view that the matter is required to be reconsidered in the light of the above observation and the Tahasildar is required to find out as to whether Section 3-B has any application to the facts of this case."

As such, the finding of the Sub-Collector, Bhubaneswar (OP No.2) to the effect that the land was being used for a purpose other than agriculture is without any basis and material on record. Hence, the same is not sustainable.

8. It is revealed from record, the impugned orders under Annexures-4 and 5 that the proceeding under Section 3-B of the Act was initiated on 29.06.2002 pursuant to the direction in OJC No.9449 of 1993, wherein this Court while disposing of the said writ petition by order dated 29.01.1996 called upon the State Government to enquire into the large number of irregularities in settlement of the Government land for agricultural purpose in favour of individuals by Tahasildars by misusing power under the Act. As such, the State Government was directed to enquire into the matter through a Senior Officer in the rank of Secretary to find out truth. It was further directed that on enquiry, if it comes to the light that the Tahasildars by misusing the power have settled land, then necessary legal and administrative action should be taken against them. It was further directed that on enquiry if it is found that the land so settled is being used for a purpose other than for which it was so settled then Government should proceed against the lessee in accordance with law. No material could be placed by Mr. Sahoo, learned AGA to the effect that the instant resumption proceeding under Section 3-B of the Act was initiated pursuant to enquiry conducted by a Senior Officer in the rank of Secretary. Further, proceeding under Section 3-B of the Act was initiated more than 27 years after the Settlement of the case land in favour of opposite party No.5. As such, it appears that the proceeding was initiated mechanically without following the direction of this Court in OJC No.9449 of 1993 and a valuable civil right accrued in favour of opposite party No.5 as well as the petitioner is taken away in the garb of compliance of orders of this Court without following due procedure of law.

Mr.Sahoo, learned AGA in course of argument vehemently argued that the land could not have been sold by the lessee, namely, opposite party No.5 in favour of the petitioner as it was leased out for a specific purpose, i.e., agriculture. He, however, could not produce any material to show that there was any condition in the lease deed itself or otherwise prohibiting the opp. Party no.5 from transferring the case land. Alienation of the property with prior permission of the Revenue Officer, Bhubaneswar cannot be considered to be violation of any condition of the lease much less the use of land, i.e., for agriculture. In that view of the matter, we find no force in the submissions of Mr. Sahoo, learned AGA.

9. In view of the discussions made above, the impugned order under Annexure-5 passed by the Sub-Collector, Bhubaneswar as well as the order passed by the Additional Tahasildar under Annexure-4 are not sustainable and accordingly the same are set aside. In view of passage of time and non-availability case record of W.L. Case No. 850 of 1974, as observed in the order under Annexure-4, no fruitful purpose will be served by remitting the matter for reconsideration. Consequently, the writ petition is allowed; but in the circumstance there shall be no order as to costs.