
(1969) 09 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 201 of 1965

Khageswar Samal

APPELLANT

Vs

Tahsildar of Jajpur and Others

RESPONDENT

Date of Decision : 09-09-1969

Acts Referred:

Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act, 1948 —
Section 2, 3, 4(1)
Orissa Offices of Village Police (Abolition) Act, 1964 — Section 4(6)

Citation : (1970) 36 CLT 159

Hon'ble Judges : G.K. Misra, C.J.; R.N. Misra, J

Bench : Division Bench

Advocate : L.S. Misra, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

G.K. Misra, C.J.—The Petitioner was a daffadar and was in charge of Union No. 17, Grama Panchayat Chhassakhand, P.S. Jaipur in the district of Cuttack. His services were terminated with effect from 31-7-1963 and a notice to that effect was issued to him by the opposite party No. 2 Collector of Cuttack. On 20-3-1963 the Petitioner was given lease of plot No. 367 and the northern portion of plot No. 213 in the same village, having an area of one acre. This was done after inviting objections. These two plots have been recorded as Rakhit Gochar. On 21-12-1964 opposite party No. 1, the Tahsildar of Jaipur issued an order cancelling the lease already granted. The Petitioner's case is that on his removal from the office of Daffadar, he was entitled to certain statutory rights created u/s 4(6) of the Orissa Offices of Village Police (Abolition) Act, 1964 (Orissa Act 3 of 1964) and that one acre of cultivable land should have been given to him after cancellation of the aforesaid lease.

2. A counter has been filed on behalf of the opposite parties stating that the lease of Rakhit Gochar lands by the Tahsildar without the permission of the Collector was void ab initio and as such the lease was validly cancelled. In

paragraph 7 of the counter the following averment was made:

The Petitioner has been assured during the subsequent enquiry that a piece of suitable land equivalent in area would be granted to him after the necessary formalities are gone into and if the same is available in the locality.

This counter was filed on 29-9-1956. It is the common case of the parties that though three years have elapsed no land has yet been given to the Petitioner.

3. The first question for consideration is whether the lease originally granted in favour of the Petitioner is void and was validly cancelled. Section 2(a)(ii) of the Orissa Communal Forest and Private Lands (Prohibition of Alienation) Act 1948 (Orissa Act 1 of 1948) defines communal land thus:

2. In this Act, unless there is anything repugnant in the subject or context, (a) "Communal land" means (ii) in relation to estates governed by the Orissa Tenancy Act, 1913, lands recorded as gochar, rakhit or sarbasadharan in the record-of-rights or waste lands which are either expressly or impliedly set apart for the common use of the villagers, whether recorded as such in the record-of-rights or not.

Admittedly; the land leased out to the Petitioner by the Tahsildar was Rakhit Gochar land and is clearly communal land within the ambit of the aforesaid definition.

Section 4(1) of Orissa Act 1 of 1948 lays down:

Any transaction of the nature prohibited by Section 3 which took place on or after the 1st day of April, 1946, shall be void and inoperative and shall not confer or take away, or be deemed to have conferred or taken away any right whatever on or from any party to the transaction.

The transactions prohibited by Section 3 include leases of communal land made without the sanction of the Collector, for a period exceeding two years. On the aforesaid provisions, the lease granted by the Tehsildar in favour of the Petitioner without the sanction of the Collector is clearly void. If the transaction is void, it can be ignored and the Collector had jurisdiction to cancel such a transaction, which means nothing other than ignoring it.

4. Mr. Misra for the Petitioner does not stand by his rights on the aforesaid lease as it is void. But he contends that if the lease was cancelled, he was entitled u/s 4(6) of Orissa Act 3 of 1964, after the termination of his service to one acre of cultivable land.

Section 4(6) runs:

Where the emolument in relation to any Village Police Officer consists only of remuneration in cash, such officer shall, as soon as may be after the appointed date, be entitled to be paid as solatium a sum equivalent to the total enrollment for the period of twelve months immediately preceding the said date and to the

settlement of one acre of cultivable land with rights of occupancy therein, on a fair and equitable rent to be determined in the prescribed manner.

There is no controversy that the Petitioner, on the termination of his services, was paid a total emolument for a period of 12 months immediately preceding the date of termination and had been given lease of one acre of land also. That lease has now been found to be void. All that the Petitioner wants is that one acre of cultivable land as prescribed in the aforesaid Section 4(6) be now settled on him subject to the rights and liabilities prescribed thereunder.

5. The contention of the Petitioner seems to be unassailable. It appears remarkable that Government inspite of the promise given in 1966 have not yet conferred any land on the Petitioner in accordance with the provisions of Section 4(6) of Orissa Act 3 of 1964, though three years have elapsed since the filing of their counter wherein the promise was given on affidavit. We think that this is a fit case in which we should issue a writ of mandamus commanding the Government to comply with the provisions of Section 4(6).

6. We accordingly direct that a writ of mandamus be issued directing the Government to settle with the Petitioner, within three months from today, one acre of cultivable land either in his village or in neighbouring village, with rights of occupancy therein on a fair and equitable rent to be determined in the prescribed manner. The writ application is accordingly allowed with costs. Hearing fee Rs. 100/- (Rupees one hundred only).

Misra, J.

7. I agree.