
(2015) 01 OHC CK 0036
In the Orissa High Court
Case No : Writ Petition (C) No. 10565 of 2012

Laxmi Mohanty

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-01-2015

Acts Referred:

Citation : (2015) 119 CLT 1083

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : S.D. Das, Senior Advocate, Nihar Ranjan Rout, M.R. Mohapatra, P.K. Mohapatra, P.K. Pali and R.R. Samantaray, for the Appellant; S.B. Mohanty, Additional SC, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Biswanath Rath, J.—By filing this writ petition, petitioner seeks a direction from this Court to the opposite parties for issuing letter of possession in respect of land situated at Mouza-Ghatikia, Plot No. 169 (C), drawing No. B/360 measuring an area 60 ft. x 90 ft. forthwith.

2. The case of the petitioner is that the petitioner being a landless lady, she was allotted with a piece of land at Mouza-Ghatikia by the G.A. Department in respect of Plot No. 169 (C), drawing No. B/360 measuring an area 60 ft. x 90 ft. The allotment was made by communication No. 3975 dtd. 26.04.1994 of the G.A. Department. Following the allotment, as referred to hereinabove, an agreement was executed between the petitioner and the G.A. Department on 18.02.1994. Petitioner was also accordingly paid the premium as fixed at the relevant point of time.

3. It is alleged that even though the petitioner was given identification of the plot and possession was handed over in her favour, but neither any letter of possession nor an order making the land freehold has been issued for a long period. Petitioner repeatedly approached to the opposite parties for the very

same reason but it did not materialize the issue and finding no action in the matter by the opposite parties, the petitioner was ultimately constrained to submit a representation on 2.03.2012. Upon failure to get any response from the opposite parties even on the representation of the petitioner, she is constrained to file the writ petition.

4. Learned counsel for the petitioner submitted that there is no reason for not issuing the possession order and by the inaction of the opposite parties, the petitioner is sufficiently harassed for no fault of her.

5. Opposite parties on their appearance filed a counter affidavit through the Additional Land Officer, G.A. Department, Government of Odisha making the specific averments therein that the allotment file corresponding to Plot No. 169 (C), drawing No. B/360 in Mouza-Ghatikia is not traceable from the allotment register. It is submitted by them that the name of the petitioner has been mentioned as against the above plot in the allotment register. While submitting so, the opposite parties also mentioned therein that in view of original allotment file not being traceable, they cannot say, if any, lease deed was at all registered or not and further submitted that in absence of any allotment file, they are also not in a position to know if the I.D. Cost has been paid by her or not.

6. In the counter affidavit the opposite parties admitted that on verification of the records they found that the petitioner has deposited the balance premium amounting to Rs. 19,753/- (Rupees nineteen thousand seven hundred fifty three only). At the same time even though the opposite parties have submitted that the file is not traceable yet, contended that as per the letter dtd. 26.04.1994, it appears that the executed Lease Deed was approved by the opposite party No. 2 and also supplied to the petitioner for registration. But the writ petition did not disclose, if she has registered the lease deed or not and if the lease deed has been registered, the I.D. cost has been paid by due date or not.

7. The opposite parties took a stand that they have a right to rollback on failure of the petitioner's depositing the I.D. Cost of Rs. 55,786/- (Rupees fifty-five thousand seven hundred eighty-six only) at the relevant point of time in view of specific condition in the allotment order. But in paragraph-9 of the counter affidavit, the opposite parties made a statement that since the file is not traceable, they are preparing to reconstruct the file in relation to the petitioner upon production of the relevant document by the petitioner. In the said paragraph, the opposite parties made a surprise statement indicating that the present exercise will be totally futile in view of the fact that the allotment made in her favour way back in 1991 stands cancelled since 1994, on the premises that she has not complied the other terms and conditions of the allotment order. It is on this premises the opposite parties claimed for dismissal of the writ petition.

8. Some and substances, the opposite parties claimed that the petitioner has to suffer on account of her own latches. This matter was listed on 19.03.2013.

Being not satisfied with the submission of the learned Additional Government Advocate particularly in view of the contradicting statements in the counter at that point of time, this Court directed the learned Additional Government Advocate to produce the relevant records and also directed the Land Officer to appear before the Court on 3.04.2013 and produce the relevant record on that date.

9. By order dtd. 3.04.2013, on his appearance the Land Officer submitted that the original records are misplaced and not available. Since the original records are misplaced and not available, this Court directed the learned counsel for the petitioner to furnish the Xerox copies of the relevant records to the learned Additional Government Advocate for his verification of the same and apprising the Court on the next date. It appears from the order-sheet that the petitioner had served all the documents available with her in the meanwhile.

10. The matter was next taken up on 8.01.2015. During course of hearing in view of contradicting statements in the counter affidavit filed by the opposite parties, this Court directed the deponent in the counter affidavit Mr. Sangram Kumar Raysardar working as Additional Land Officer, G.A. Department to present in Court on 13.01.2015 for explaining to this Court alongwith records available with him in connection with the petitioner.

11. The matter was next taken up on 13.01.2015 on which date on his appearance, Mr. Raysardar, Additional Land Officer made a categorical statement that their submission with regard to cancellation of allotment in the counter was based on no material and, therefore, it is an inadvertent averment and sought for time to come forward with a corrected affidavit. Pursuant to liberty granted by this Court, an additional affidavit was filed by the very same Officer inter alia contending therein that there was a lease deed executed on 18.02.1994 and registered on 7.01.1999. But taking resort to several conditions in the allotment order made a submission that there is no compliance of several conditions by the petitioner and considering the case standing in similar situation, the Government has already come-out with a further communication as available under Annexure-E/1, under the changed circumstances, they are prepared to accept the offer of the petitioner provided the petitioner is prepared to comply the requirements made in the subsequent letter of the Government dtd. 14.01.2015.

In the additional affidavit, the opposite parties also enclosed the copy of the Registered Lease Deed No. 69/99 in respect of the petitioner and the opposite parties concerning the very same plot as available at Annexure D/1.

12. The above narrations make it clear that the G.A. Department has lost the file involving the allotment in favour of the petitioner, however dependent on the supply of documents by the petitioner with the issue concerned, a file has been reconstructed besides they have also collected copy of the Registered Lease Deed in connection with the land involved. From the opposite parties counter affidavit as well as the additional affidavit, it is amply clear that there is an

allotment in favour of the petitioner concerning the particular Plot No. 169 (C), drawing No. B/360 in Mouza-Ghatikia. There is no denial to the fact that there exists a registered lease agreement in fact a copy of which has also been filed by the opposite parties as appearing at Annexure-D/1.

13. It is submitted by the opposite parties that the petitioner has not deposited the I.D. Cost i.e. the infrastructure development cost to which learned Senior Counsel appearing for the petitioner submits that after lapse of twenty years the petitioner is unable to produce the documents in proof of such deposit however agrees to deposit the I.D. Cost fixed at the relevant point of time along with interest fixed by this Court for all these period. Learned counsel for the petitioner challenged the demand of opposite parties for depositing the receipt in proof of the I.D. Cost vide Annexure E/1 on the ground that she did not have any receipt with her at the present moment for which it could not be ascertained whether this deposit has been made or not, secondly if it had not deposited nothing prevented then for the State Government from making a claim from the petitioner within a specified period of time and in absence of a notice in this regard opposite parties cannot claim deposit of receipts in proof of the same. The opposite parties objected to such argument of the petitioner on the premises that considering such cases, the State Government has already taken a decision for finalizing the allotments subject to compliance of the conditions as contemplated in Annexure-E/1. I find sufficient force in the submission of the petitioner.

On perusal of Annexure-E/1 discloses that this is a communication dtd. 14.01.2015 issued at the instance of the G.A. Department asking the petitioner to produce the proof/documentary evidence in support of the deposit of I.D. cost by installment and duplicate lease deed. This appears to be a document prepared by the opposite parties with intention of taking an advantage of the situation for loss of the particular file and thereby depriving the petitioner to get the land.

14. From the pleadings available in the writ petition as well as the counter and the additional affidavit, it is clear that there is already a registered deed amongst the parties prepared on 18th September, 1992 and registered on 23.05.1994. From the documents vide Annexure D/1 it appears that the G.A. Department has already obtained a certified copy of the said registered deed as available under Annexure-D/1 and is already in the custody of the opposite parties, I do not find any pleading or document at the instances of the opposite parties raising any doubt in the matter of deposit of the I.D. Cost. The document vide Annexure-E/1 appears to have been issued after the development taken place in this Court in the matter of allotment and registration of the particular land in favour of the petitioner.

15. Under the premises, it may be maximum a case for non-deposit of the I.D. cost but keeping in mind that the petitioner is prepared to deposit the infrastructural development cost with appropriate interest as fixed by the Court, I dispose of this writ petition with a direction to the opposite parties not to insist on production of a duplicate registered lease deed but to proceed to finalize the

matter subject to acceptance of the I.D. cost of Rs. 55,786/- (Rupees fifty five thousand seven hundred eighty-six only) as decided in the year 1991 in issuing the order of allotment in favour of the petitioner as available under Annexure-B/1 to the counter affidavit by the opposite parties alongwith interest @ 15% per annum for all these years within a period of one month from the date of judgment. Subject to petitioner's deposit of the aforesaid amount, the opposite parties are directed to issue a letter of possession in favour of the petitioner in respect of Plot No. 169 (C), drawing No. B/360 measuring an area 60 ft. x 90 ft. at Mouza-Ghatikia, within a period of two weeks thereafter.

16. The writ petition succeeds to the extent directed hereinabove. However, there shall be no order as to cost.