

(2019) 04 OHC CK 0019

In the Orissa High Court

Case No : Writ Petition (Civil) No.4332 Of 2004

Life Improvement Members Association

APPELLANT

Vs

State Of Orissa & Others

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Orissa Government Land Settlement Act, 1962 — Section 3(4)(B), 3(4)(CII)
Orissa Prevention Of Land Encroachment Act, 1972 — Section 12(3)
Orissa Survey And Settlement Act, 1958 — Section 21(1)

Citation : (2019) 04 OHC CK 0019

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : V. Narasingh, S. Das, S. Devi, K. Rath, R.N. Parija, S.S. Swain, P.K. Mohanty, S.K. Patnaik, P.K. Nayak, D.N. Mohapatra, S.N. Dash, D.P. Patnaik, P.K. Satpathy, A. Das, J. Mohanty, A.K. Rout, B. Behera

Final Decision : Dismissed

Judgement

Biswanath Rath, J

1. This writ petition has been filed challenging the notices as well as the orders involving Annexure-2(series), 3, 4 & 5 involving the proceedings under the O.P.L.E Act, 1972. As appears, the writ petition has been filed by the Life Improvement Members Association in short hereafter called as LIMA represented through its General Secretary, Alexi Lima as the petitioner.

2. Short background involved in this case is that the petitioner's organization shortly called as LIMA is a Society registered under the Societies Registration Act, 1860 having its Office and building to accommodate the Orphanage children within the jurisdiction of Nawarangpur

District. Petitioner-origination established an orphanage in the name and style of â??Arnnapurna Asish Bhawanâ? having the construction in the

Mouza Podalguda, Khata No.791 plot no.1489 area Ac.0.07 Kissam A.J.A. and Nawarangpur Khata No.451 Plot No.1489/2374 Ac.0.03 and Plot

No.154 Ac.0.30 in total area measuring Ac.0.40 decimals. The land, over which the orphanage was built, was acquired in the year 1984 but in the

year 1974 possession of the land was taken from the then Maharaja family of Jeypore and the sanction for grant-in-aid to such organization, was given

by the Government. Petitioner has also further pleaded that the construction of the orphanage was based on a lease and on the decision of the

Tahasildar in the year 1993 to settle the land in the name of the petitionerâ??s organization in exercise of power U/s.3(4)(B) read with Section 3(4)

(C-II) of the O.G.L.S Act. The petitioner enclosed proclamation vide Annexure-1(series).

It is, in the circumstance, Sri Narasingha, learned counsel for the petitioner contended that the petitioner-organization is in possession of the disputed

land since 1984 and using the same by setting up a orphanage building involved herein. While the matter stood thus, the Tahasildar vide notice dated

23.09.1996 instituted encroachment case No.1317 of 1996 and No.1485 of 1996. In disposal of both the encroachment cases, it has been held by the

Tahasildar that the orphanage is constructed over the Government land and for the encroachment of Government land, the Tahasildar vide order dated

23.09.1996 directed for eviction of the persons in possession of the encroached land, further also levied penalty for unlawful possession by the

encroachers as appearing at Annexure-2(series). Petitioner being aggrieved by the aforesaid order in Annexure-2(series) filed appeal vide OPLE

Appeal No.3 of 1996 which was dismissed on 31.03.2000 holding that the land belongs to Government, therefore, the petitioner did not have any locus

standi. It has been observed by the Sub-Collector vide its order dated 31.03.2000 at Annexure-3 that the orphanage was never existed over the suit

land. Being aggrieved by the order of the Sub-Collector vide Annexure-3, the petitioner preferred OPLE Revision No.3 of 2000. The revision

application was also dismissed by order dated 29.09.2000 vide Annexure-4. A further revision being preferred U/s.12(3) of the OPLE Act, 1972 by

Alexi Lima challenging therein the order passed in OPLE Revision No.3 of 2000, the Revenue Divisional Commissioner, Southern Division vide its

order dated 30.01.2004 dismissed the revision U/s.12(3) of the Act as appearing at Annexure-5, resulting the present writ petition.

3. Further background involving the case is, anticipating the eviction action by the State authorities the petitioner sought intervention of this Court by

filing O.J.C. No.5001 of 1994. The said writ petition was disposed of with a direction to hold an inquiry as to whether such organization is existing or

not? In the meantime, in another writ petition vide O.J.C. No.11942 of 1996 this Court again directed the competent authority to give reasonable

opportunity to the petitioner in the matter of de-recognition of the petitioner-organization. In another writ petition vide O.J.C. No.16635 of 2001, there

has been further order by this Court directing the Collector, Nawarangpur to submit his views with regard to grant or cancellation of registration of the

petitioner-association to Government. On the claim of the petitioner that the petitioner had earlier approached this Court in two other writ petitions as

indicated hereinabove, this Court finds, there is no certificate in the cause title involving these two writ petitions. It is, on the other hand, the certificate

therein discloses that the petitioner has never come to this Court before filing of the present writ petition. Further, from the paragraph no.16 of the writ

petition, this Court only finds, the disclosure made therein is only the order portion which neither discloses as to who was the petitioner therein nor it

discloses as to in which proceeding and or which context, the High Court order therein was passed. Similarly from the copy of the order involving

O.J.C. No.5001 of 1994 at Annexure-13 page 158 of brief, this Court finds, this order also does not disclose as to if that petition was at the instance of

the present petitioner or not and since the matter involved issue of grant-in-aid, this decision has also no assistance to the case at hand.

4. On the above view of the matter, learned counsel for the petitioner submitted that the authorities have failed to appreciate the original owner of the

land being Ex-Maharaja, Jeypore not being controverted anyway and further the factum of possession involving the disputed property since 1941.

Further, it is also alleged by the learned counsel for the petitioner that the impugned orders are clouded by irrelevant considerations and the findings

also remaining perverse to the materials available on record. During course of submission by bringing to the notice of this Court to a document vide

Annexure-19 and the development involving the Objection Case no.996/89/39/74 involving a proceeding U/s.21(I) of the O.S.S. Act, 1958,

learned

counsel for the petitioner submitted that there has been order in the said proceeding to record the land involving Plot No.1489/2374 Act.0.03 in favour

of Gyanendra Lima. It is also alleged that there has been no consideration of such development appearing therein.

5. Shri B. Behera, learned Additional Standing Counsel, in his opposition, taking this Court to the stand of the State in the original proceeding and the

grounds taken by the State in the appeal proceeding as well as in the revisions involved herein submitted that there is failure on the part of the

petitioner in establishing his rightful possession over the disputed land for the required period. Further, taking this Court to the findings arrived at by all

the forums, Shri B. Behera, learned Additional Standing Counsel submitted that for the concurrent finding of fact involving the writ petition and there is

no involvement of perversity, there is no infirmity in either of the orders requiring interference of this Court in the same. It is, at this stage, Shri B.

Behera, learned Additional Standing Counsel while challenging the locus standi of the petitioner in preferring the litigation also contended that for the

initial initiation of the two OPLE Cases vide No.1317 of 1996 and No.1485 of 1996 and there being one appeal and a revision in spite of two

independent orders involving the encroachment proceeding, Shri B. Behera, learned Additional Standing Counsel submitted that from the background

involving the appeal involved herein, it appears, there is abandonment of the order involving OPLE case No.1317 of 1996. Shri B. Behera, learned

Additional Standing Counsel, therefore, sought for dismissing the writ petition so far it relates to the order involving OPLE Case no.1317 of 1996 as

appearing at page 19 of the brief.

6. Considering the rival contentions of the parties, going through the pleadings and taking into account the question with regard to the maintainability of

the writ petition so far as the order involving the OPLE Case No.1317 of 1996 is concerned, looking to the prayer involving the writ petition, this Court

finds, the petitioner challenges the order at Annexure-2(series) but however, involving the OPLE Case No.1485 of 1996 as clearly reflected in the

prayer of the writ petition and as appearing at page 13 of the brief. This Court, therefore, observes, there is no challenge to the order involving the

OPLE Case No.1317 of 1996 in the writ petition. Even otherwise also the

petitioner is estopped from challenging the order involving OPLE Case no.1317 of 1996, for the petitioner involved therein abandoning the order involving OPLE Case no.1317 of 1996 by way of appeal or revision, the order at Annexures-3, 4 & 5 shall also be confined to the OPLE Case no.1485 of 1996. It is, at this stage of the matter, considering the case of the petitioner involving OPLE Case No.1485 of 1996 this Court though finds, the petitioner has brought out a set of facts involving the dispute but this Court nowhere finds filing of the show case by the petitioner in the OPLE Case No.1485 of 1996. This Court further finds, the Tahasildar has passed the said order finding admission of the encroacher and based on the report involved therein and the Tahasildar directed the Revenue Supervisor, Nawarangpur to have a field inquiry and based on the field inquiry report submitted by the Revenue Supervisor finding unauthorized encroachment over the Government land, the case was next posted to be taken up alongwith other encroachment case vide No.1317 of 1996 on 23.09.1996. By order dated 23.09.1996 it appears, the Tahasildar after observing that the land under encroachment remain objectionable, while directing eviction of the encroacher also assessed penalty so far as the land involving the OPLE Case no.1485 of 1996 is concerned. The proceeding however, continued so far it relates to OPLE Case no.1317 of 1996. For the abandonment of the order involving the OPLE Case No.1317 of 1996 by the petitioner, the further proceeding by the Tahasildar, if any, remains academic. Now coming to the appeal involving the order involving OPLE Case no.1485 of 1996, it appears, the appeal was preferred by Alexi Lima being the Secretary of Arnnapurna Asish Bhawan, the party involving OPLE Case No.1317 of 1996. Similarly, revision vide OPLE (R) No.3 of 2000 was filed which also appears to have been preferred by the Arnnapurna Asish Bhawan represented through Alexi Lima. Subsequently, a revision U/s.12(3) of the Act, 1972 was initiated at the instance of the Alexi Lima. So far as the revision U/s.12(3) is concerned, this Court observes, for the undertaking of the exercise of appeal and revision involving the decision in OPLE Case no.1485 of 1996, there was no question of entertainment of a revision U/s.12(3) of the Act, 1972. Therefore, the order involving the revision U/s.12(3) of the Act, 1972 vide Annexure-5 remains void for the undertaking of a process being barred by law. So far as the orders vide Annexures-3 & 4

involving the appeal and the revision are concerned, this Court finds, the proceedings were undertaken at the instance of the Arnnapurna Asish Bhawan being the appellant and revisionist therein. This Court also finds, the writ petition at hand is filed by LIMA an establishment represented by its General Secretary Alexi Lima. It is, in the circumstance and for no challenge by the objector Arnnapurna Asish Bhawan who is the appellant in appeal and also the revisionist in the revision and in absence of any leave by LIMA for undertaking a writ process in this Court for its no involvement in either of the proceedings, this Court finds, the petitioner has no locus standi to file the writ petition. This Court also observes that for the concurrent finding of fact by all the three courts below, there is also no scope for this Court to interfere in such orders in exercise of power under Article 227 of the Constitution of India.

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7. Writ petition stands dismissed on all the above counts. However, there is no order as to cost.

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