
(2006) 08 OHC CK 0034
In the Orissa High Court
Case No : Writ Petition (C) No. 9078 of 2003

Lokanath Mishra and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:

Orissa Government Land Settlement Act, 1962 — Section 3(B), 7A(3)
Orissa Government Land Settlement Rules, 1983 — Rule 5

Citation : (2006) 2 OLR 544

Hon'ble Judges : S.B. Roy, C.J; M.M. Das, J

Bench : Division Bench

Advocate : Manoj Mishra, P.K. Das and D. Mishra, in W.P. C No. 9078 of 2003 and S.P. Mishra, S.K. Mishra and S. Nanda, in W.P. C No. 1802 of 2004, for the Appellant; Government Advocate in W.P. (C) No. 1802 of 2004 for O.Ps. 1 and 2 in W.P. (C) No. 9078 of 2003, for the Respondent

Final Decision : Allowed

Judgement

M.M. Das, J.—As pleadings of the parties are complete and the impugned orders in both the writ petitions are same and they arise out of the same set of facts and involve same question of law, they are heard together and are being disposed of by this common judgment.

2. The petitioner-Shyama Prasanna Mohanty in W.P.(C) No. 1802 of 2004 made an application for lease of a piece of land before the Tahasildar, Bhubaneswer which was registered as a Waste Land Lease Case No. 2038 of 1979. Ultimately, in the said lease case, land measuring Ac. 2.00 under khata No. 474/12 appertaining to plot No. 516/702 situated in mouza Patia was leased out in favour of the petitioner. The name of the petitioner was recorded after correcting the Record of Rights of the said land. The petitioner continued in possession of the said land and paid rent for the same to the Government.

3. It is revealed from the facts of the case that different parcels of land from the said leasehold land of Shyama Prasanna Mohanty were alienated by him in

favour of the petitioners, twelve in number, in W.P.(C) No. 9078 of 2003. It further appears that while disposing of a writ petition bearing O.J.C. No. 9449 of 1993 (Shri Sarata Kumar Sahoo v. Additional District Magistrate, Khurda and Ors. 81 (1996) CLT 513 where the lease granted under the Orissa Government Land Settlement Act, 1962 (hereinafter referred to as "the Act") being cancelled by the Addl. District Magistrate in exercising power under the provisions of Section 7-A(3) of the Act, was challenged, this Court made certain observations and directions which are as follows:

... Before parting with the case, we would like to observe that it has come to our notice that Government lands adjoining State Capital, have been settled by the Tahasildar, Bhubaneswar for agricultural purpose in exercise of power under the Act. Those lands are most valuable and are fit for use as "house site". A probe is necessary to ascertain as to the extent of such lands settled by the Tahasildar and their present use. We, therefore, direct the State Government to enquire into the matter through a Senior Officer in the rank of Secretary and on enquiry if it comes to light that the Tahasildar by mis-use of power has settled the lands, then necessary legal and administrative action should be taken against him and further if the lands so settled are used otherwise than the purpose, Government should proceed against the lessees in accordance with law....

4. In the instant case, after the original lessee (petitioner in W.P.(C) No. 1802 of 2004) sold different parcels of the lease hold land in favour of the petitioners in W.P.(C).No. 9078 of 2003 in the year 1999 and after afore-quoted order was passed in a writ petition (OJC No. 9449 of 1993 disposed of on 29.1.1996) by this Court, in the year 2002, a D.O. letter was sent by the Sub-Collector to the office of the Tahasildar, Bhubaneswar basing on which a proceeding u/s 3(B) of the Act was initiated in the said W.L. Case No. 2038 of 1978. The said proceeding culminated in the order dated 22.5.2003 by the Addl. Tahasildar, Bhubaneswar which is impugned in these writ petitions. By the said order, the Addl. Tahasildar has directed resumption of the lease measuring Ac. 2.00 of land granted in favour of the said original lessee.

5. Mr. S.P. Mishra, learned Counsel appearing for the petitioner in W.P.(C) No. 1802 of 2004 submits that the impugned order has been passed without jurisdiction. He further submits even assuming that the Addl. Tahasildar, Bhubaneswar has power to initiate proceeding u/s 3 (B) of the Act as no case is made out for resumption of the lease, the impugned orders are not only illegal but arbitrary. Mr. Mishra by referring to the decision in the case of Smt. Ahalya Sahu and Ors. etc. v. State of Orissa and Ors. 81 (1998) CLT 319 contended that as the provisions of the Act are not applicable to the urban areas of Bhubaneswar, the Addl. Tahasildar has acted wholly without jurisdiction in initiating the proceeding u/s 3 (B) of the Act for resumption of the lease.

6. On perusal of the above cited decision, we find that a Division Bench of this Court while dealing with the legality or otherwise of a lease granted by the G.A. Department of the Government of Orissa held as follows:

Now coming to the 1962 Act and the Rules framed thereunder it would appear (vide Rule 5 thereof) that all applications for settlement of Government land either in rural or in urban area has to be filed before the Tahasildar having jurisdiction over the area in which the land is situated. The Tahasildar under the said rule, inter alia, will examine the matter and after necessary verification, if he is of the opinion that settlement of land may be granted, he shall publish a proclamation in a prescribed form and invite objection fixing a date for hearing of such objections. After completion of the said formalities, the Tahasildar shall submit the case record to the Sub-divisional Officer having jurisdiction for approval. Schedule 11 of the 1962, Act deals with exercise of power by different officers to sanction settlement of Government land in urban area excluding Bhubaneswar, Rourkela and Sunabeda. Exclusion of Bhubaneswar from the Schedule-11 indicates that the 1962 Act and the Rules framed thereunder have no application in urban area of Bhubaneswar. The provisions of the 1962 Act and the Rules framed thereunder being inapplicable to the lands in the urban area of Bhubaneswar, the question of publishing proclamation and inviting objection as required under Rule 5 does not arise. The General Administration Department of the Government being the appropriate department to lease out land in the capital area of Bhubaneswar we do not find any wrong committed by the Government in allotting the land to opp. party No. 4.

7. However, it appears from the facts of the present case that W.L. Case was registered in the year 1979 and the land is situated under mouza Patia. Nothing is brought before this Court by the petitioners to show that the said mouza was included in the urban area of the new Capital Bhubaneswar in 1979. We, therefore, do not agree that the ratio of the aforementioned decision will apply to the facts of the present cases. Hence, we hold that the provisions of Section 3-B of the Act can be applied to the lease granted in the aforementioned W.L.Cases.

8. Mr. S.P. Mishra taking us through the impugned order dated 22.5.2003 submitted that except the directions of this Court made in the aforementioned decision in the case of Shri Sarat Kumar Sahoo (supra) which has been quoted above, there was no basis for the Addl. Tahasildar to initiate the proceeding u/s 3-B of the Act. We find that the contention of Mr. Mishra to be acceptable as is revealed from the first paragraph of the impugned order dated 22.5.2003. We are constrained to note that in the order passed by this Court in the case of Shri Sarat Kumar Sahoo (supra), this Court has never directed to initiate proceeding u/s 3-B of the Act in each and every case where lease was granted by the Tahasildar, rather, it was specifically directed that where it comes to light that the Tahasildar by misuse of power has settled the land, then while taking necessary legal and administrative action against the said Tahasildar, it should be examined if the lands so settled are used otherwise than the purpose for which it was settled and accordingly, proceedings should be drawn up against the lessees in accordance with law. In the instant cases, we do not find that there was any enquiry made by a senior officer of the rank of Secretary as per direction of this Court and that in such enquiry, it was found that the then Addl. Tahasildar has

granted the lease by misuse of his power. We, therefore, hold that inception of the proceedings u/s 3-B of the Act, in the instant case, was uncalled for.

9. Mr. Mishra further drew our attention to the findings of the Addl. Tahasildar in the impugned order where it has been clearly stated that W.L. case record in which lease was sanctioned is not available as reported by the D.A., Lease Section and submits that even though the said record was not traced out, the Addl. Tahasildar has surmised that the lease was granted under the Act to Shyama Prasana Mohanty for agricultural purpose. We fail to understand as to on what basis the Addl. Tahasildar came to the finding that the lease was granted for agricultural purpose even though it is candidly stated in the impugned order that the W.L. Case record was not traced out.

10. Mr. Manoj Mishra, learned Counsel for the petitioners in W. P. (C) No. 9078 of 2003 submits that even though the petitioners in the said writ petition are subsequent purchasers of different parcels of land from out of the lease hold land from the original lessee, no notice whatsoever was issued to them whose rights have been affected by the impugned order.

11. In the case of Krushna Ch. Panda and Another Vs. State of Orissa and Others, and in the case of Smt. Sandhya Rout and Others Vs. State of Orissa and Others, this Court has held that in a proceeding u/s 3-B of the Act, it is necessary to issue notice to the affected parties as their substantial civil rights will be affected by any adverse order passed against the original lessee. We further held that such a procedure is necessary for complying the principles of audi alteram partem.

12. Learned Government Advocate supporting the impugned order submitted that as the lease was granted for agricultural purpose and during local inspection, the Addl. Tahasildar found that the original lessee is not in possession over the said land and constructions have been raised, it is a clear case where the lease hold property was used for purposes other than for which it was granted. We are, therefore, unable to accept the contention made on behalf of the State as the said findings in the impugned order do not have any foundation as already discussed above.

13. In the circumstances, we are constrained to hold that the impugned order is not sustainable in law and we accordingly quash the said order dated 22.5.2003 passed by the Addl. Tahasildar, Bhubaneswar in W.L. Case No. 2038 of 1979.

Both the writ petitions are allowed.

S.B. Roy, C.J.

14. I agree.